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IN THE COURTS OF ENGLAND AND IRELAND.

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VOL. XVIII.

1895 to 1899.

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LONDON:  
HORACE COX, WINDSOR HOUSE, BREAM'S BUILDINGS, E.C.

1899.

2/5/1906.  
#75474

LONDON:  
PRINTED BY HORACE COX, WINDSOR HOUSE, BREAM'S BUILDINGS, E.C.



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**Criminal Law Cases.**

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CROWN CASES RESERVED.

*Saturday, April 21, 1894.*

(Before Lord COLEBRIDGE, C.J., HAWKINS, MATHEW, CAVE, and  
GRANTHAM, JJ.)

REG. v. DYSON. (a)

*Undischarged bankrupt—Obtaining credit without disclosing  
bankruptcy—Practice—Evidence—Intent to defraud—32 & 33  
Vict. c. 62, s. 18; 46 & 47 Vict. c. 52, s. 31.*

*An intent to defraud is not an ingredient of the offence created by  
sect. 31 of the Bankruptcy Act, 1883, which renders it unlawful  
for an undischarged bankrupt to obtain credit to the extent of  
twenty pounds or upwards from any person without informing  
such person of the fact of his being an undischarged bankrupt.*

CASE reserved for the consideration of this court by the  
Court of Quarter Sessions for the West Riding of York-  
shire, pursuant to 11 & 12 Vict. c. 78. The case was as  
follows:—

Alfred Dyson was indicted at the Christmas General Quarter  
Sessions of the peace for the West Riding of Yorkshire,  
held at Leeds, on the 1st and 2nd Jan. 1894, for offences  
alleged to have been committed by him under sect. 31 of the  
Bankruptcy Act, 1883.

The first count of the indictment (omitting formal parts) was  
as follows:—

That at the time of the committing of the offence next hereinafter mentioned,  
Alfred Dyson was an undischarged bankrupt, who had on the 30th day of April, 1885,  
been adjudged bankrupt under the Bankruptcy Act, 1883, and that the said Alfred

(a) Reported by R. CUNNINGHAM GLEN, Esq., Barrister-at-Law.

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Dyson on the 16th day of May, 1892, being such undischarged bankrupt as aforesaid, unlawfully did obtain credit to the extent of 20*l.* and upwards, that is to say, to the extent of 103*l.* 18*s.* 11*d.* from one Isaac Naylor, without informing the said Isaac Naylor that he the said Alfred Dyson was then an undischarged bankrupt.

Bankruptcy—  
Obtaining  
credit—  
Undischarged  
bankrupt—  
Practice—  
Evidence—  
Intent to  
defraud—  
46 & 47 Vict.  
c. 52, s. 31.

The second count was in the same form as the first count, except that the amount of credit therein alleged to have been obtained from the said Isaac Naylor was 163*l.* 2*s.* 6*d.*, and the date upon which such credit was alleged to have been obtained was the 3rd day of June, 1892.

The indictment contained two further counts which are not material to the question raised in this case. It was proved at the trial that the defendant had been duly adjudged bankrupt under the Bankruptcy Act, 1883, on the 30th day of April, 1885, in the County Court of Yorkshire, holden at Huddersfield, and that he had never obtained his discharge from such bankruptcy. It was also proved that the defendant had since his bankruptcy carried on business in Huddersfield, and that on the 16th day of May, 1892, and the 3rd day of June, 1892, respectively, goods to the value of 103*l.* 18*s.* 11*d.* and 163*l.* 2*s.* 6*d.* respectively were purchased upon credit by the defendant from the said Isaac Naylor, at Bradford, and that such goods were on the said dates respectively delivered to the defendant upon credit, and kept by him without any payment being made therefor. It was also proved that the defendant did not on either of the said dates, or at any other time, inform the said Isaac Naylor that he the defendant was an undischarged bankrupt and that the said Isaac Naylor was not at the time the said credits or either of them were obtained aware of such fact.

It was proposed by counsel for the defendant to put questions to the witnesses called on behalf of the prosecution with a view to show that, although the above-mentioned credits had been obtained by the defendant without any information having been given that he was an undischarged bankrupt, and without the said Isaac Naylor having been aware of the fact, such credits had been so obtained by the defendant without intent to defraud, and it was submitted on behalf of the defendant that if he could show that although the said credits were obtained as aforesaid they were so obtained without intent to defraud, he was entitled to an acquittal.

It was objected by counsel on behalf of the prosecution that an intent to defraud was not an ingredient of the offence charged under sect. 31 of the Bankruptcy Act, 1883, and that an offence under the said section was proved upon proof that the defendant had obtained credit to the extent of 20*l.* or upwards without giving the information specified in the section.

The Court was of opinion that for the purpose of determining whether or not an offence under the section had been committed it was immaterial to consider whether the credit had been obtained with or without an intent to defraud, and ruled that questions proposed to be put only with a view to show an

absence of an intent to defraud could not be put, and directed the jury upon the question of fraudulent intent in accordance with the above opinion.

The Court, at the request of the counsel for the defendant, consented to reserve this case for the consideration of Her Majesty's judges in the event of the jury convicting the defendant.

The jury convicted the defendant upon the first two counts of the indictment, and he was sentenced by the court to six weeks imprisonment without hard labour.

The defendant has, pending the consideration of this case, been discharged on recognisance of bail to render himself in execution in the event of the conviction being affirmed.

The question for the consideration of the judges of Her Majesty's High Court of Justice is, whether the above-mentioned ruling and direction was right or wrong.

If the Court is of opinion that the defendant should have been allowed to cross-examine with a view to show that, in obtaining the above-mentioned credits under the circumstances and in manner above mentioned, he had no intent to defraud, and that the jury should have been directed to acquit the defendant if satisfied that in obtaining the said credits he had no such intent, the conviction in this case is to be quashed; otherwise it is to be affirmed.

By sect. 31 of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), it is enacted that :

Where an undischarged bankrupt under this Act obtains credit to the extent of twenty pounds or upwards from any person without informing such person that he is an undischarged bankrupt, he shall be guilty of a misdemeanour, and may be dealt with and punished as if he had been guilty of a misdemeanour under the Debtors Act, 1869, and the provisions of that Act shall apply to proceedings under this section.

By sect. 18 of the Debtors Act, 1869 (32 & 33 Vict. c. 62), it is enacted that :

Every misdemeanour under the second part of this Act shall be deemed to be an offence within and subject to the provisions of the Act of the session of the twenty-second and twenty-third years of the reign of Her present Majesty, chapter seventeen, intituled "An Act to prevent vexatious indictments for certain misdemeanours;" and when any person is charged with any such offence before any justice or justices, such justice or justices shall take into consideration any evidence adduced before him or them tending to show that the act charged was not committed with a guilty intent.

*Harper* on behalf of the prisoner, contended that the effect of the enactment in sect. 31 of the Bankruptcy Act, 1883, that the provisions of the Debtors Act, 1869, shall apply to proceedings under the section, was to incorporate into that section the provisions of sect. 18 of the earlier Act, and that therefore it was incumbent on the prosecution to prove an intent to defraud on the part of the prisoner, or that at any rate it was open to the prisoner to disprove any such intent. [HAWKINS, J.—The object of the statute is not to prevent fraud, but to prevent a person who is an undischarged bankrupt obtaining goods from people

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Bankruptcy—  
Obtaining  
credit—  
Undischarged  
bankrupt—  
Practice—  
Evidence—  
Intent to  
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without those people being informed that he is an undischarged bankrupt.] In *Reg v. Peters* (54 L. T. Rep. 545; 16 Q. B. Div. 636; 16 Cox. C. C. 36; 55 L. J. 173, M. C.), Lord Coleridge, C.J. said: "In such a case as the present where a man obtains goods and does not pay for them for a substantial period of time, I am not prepared to say that we ought to limit the plain meaning of the words in the Act of Parliament." It would appear therefore that the jury were entitled to take into consideration any evidence the prisoner might be able to give as to intent; and here, such evidence having been withheld from the jury, the conviction was wrong.

*Lowenthal*, on behalf of the prosecution, was not called upon.

LORD COLERIDGE, C.J.—This is an indictment under sect. 31 of the 46 & 47 Vict. c. 52, a statute which says that where an undischarged bankrupt obtains credit to the extent of twenty pounds or upwards from any person without informing such person that he is an undischarged bankrupt, he shall be guilty of a misdemeanour, and may be dealt with and punished as if he had been guilty of a misdemeanour under the Debtors Act, 1869. Now this man did, the jury have found, obtain credit to the extent of 103*l.* 13*s.* 11*d.* and 163*l.* 2*s.* 6*d.* from a person with whom he dealt without informing such person that he was an undischarged bankrupt. It appears to me, therefore, that the whole purpose of the statute was fulfilled, and that everything that was necessary was proved before the quarter sessions. The only distinction between this and the case of *Reg. v. Peters* (*ubi sup.*) is, that there it was a cash transaction, whereas here it was not a cash transaction. That case clearly lays down the rule that it is immaterial whether it was a cash transaction or not. The words of the statute are "obtaining credit," and it is found that here the prisoner obtained goods on credit. The prisoner having obtained credit without giving the required information, I cannot entertain a doubt but that whether or not he had any intent to defraud he had done all that was necessary to bring him within the section, and that the conviction was perfectly right. It follows that the conviction must be sustained.

HAWKINS, J.—I am of the same opinion, and cannot entertain any doubt on the subject when I read the words of the section, namely, that "where an undischarged bankrupt obtains credit to the extent of twenty pounds or upwards from any person without informing such person that he is an undischarged bankrupt, he shall be guilty of a misdemeanour." The reference at the end of the section to the Debtors Act, 1869, to which our attention has been drawn by the learned counsel for the prisoner, is relied upon as showing that an intent to defraud is an essential element in the offence created by the section. I have looked at that Act, however, and am very much struck by the fact that all the offences there are offences in the creation of which the words "with intent to defraud" are used, or the words "unless the jury is satisfied that he had no intent to defraud." It can hardly,

therefore, have been intended by the Legislature in the present Act to have made this an offence only where there is an intent to defraud. I am quite satisfied that, if it had been so intended, we should have found those words in the statute. I am therefore of opinion that this conviction must be affirmed.

MATHEW, J.—An ingenious attempt is made in this case to incorporate sect. 18 of the Debtors Act, 1869, into sect. 31 of the Bankruptcy Act, 1883, and to read the latter section as if there were found at the end of the section these words: “And when any person is charged with any such offence, any evidence tending to show that the act charged was not committed with a guilty intent shall be taken into consideration.” Now is that the usual way to interpret statutes? It seems to me clear that it is not, because when you look at sect. 18 of the earlier Act it is clear that it applies to proceedings before justices, and that its object is to enlarge the discretion of the justices under the general discretion conferred upon them by the Vexatious Indictments Act. In my opinion this conviction should be affirmed.

CAVE, J.—I am of the same opinion. The question of intent does not arise in this case.

GRANTHAM, J.—I am of the same opinion.

*Conviction affirmed.*

Solicitor for the prosecution. *The Solicitor to the Treasury.*

Solicitors for the prisoner, *Van Sandau and Co., for Milnes and Marshall, of Huddersfield.*

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## CROWN CASES RESERVED.

*Saturday, April 21, 1894.*

(Before Lord COLERIDGE, C.J., HAWKINS, MATHEW, CAVE, and GRANTHAM, JJ.)

REG. v. BLABY. (a)

*Practice — Evidence—Previous conviction — Meaning of “convicted” — Finding of jury—Prisoner released on recognisances — Offences against Coinage Act, 1861—24 & 25 Vict. c. 99, ss. 9 and 12.*

*The fact of a prisoner having been found guilty by the verdict of a*

(a) Reported by R. CUNNINGHAM GLEN, Esq., Barrister-at-Law.



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*jury of any of the misdemeanours, crimes, or offences mentioned in sects. 9, 10, and 11 of 24 & 25 Vict. c. 99 (the offences relating to the Coinage Act, 1861), is sufficient to satisfy the word "convicted" in sect. 12 of that Act, which enables the conviction of a person for felony who has committed any of the misdemeanours, crimes, or offences mentioned in sects. 9, 10, and 11, after having been convicted previously of any of such misdemeanours, crimes, or offences. Evidence therefore of such finding is sufficient to support an indictment under sect. 12, and it is not necessary to prove that final judgment was given upon such finding.*

CASE stated by the Common Serjeant of London for the consideration of this Court as follows:

This prisoner was tried before me at the February Sessions of the Central Criminal Court, for feloniously uttering counterfeit coin under sect. 12 of 24 & 25 Vict. c. 99.

A copy of the indictment is sent herewith for reference.

The prisoner was given in charge to the jury in accordance with the usual practice on the first part of the indictment only, viz., that which charged her with uttering a counterfeit florin, on the 11th day of January, 1894, to Emily Hutchinson, well knowing it to be false and counterfeit.

Mr. Partridge appeared as counsel for the Mint, and the prisoner was defended by Mr. Burnie.

The prisoner in the hearing of the jury said: "I desire to plead guilty to the uttering of the florin on the 11th day of January, 1894." The jury therefore found a verdict of "guilty" accordingly. The prisoner was then given in charge to the jury on the second part of the indictment, which charged her with having been previously convicted on the 23rd day of April, 1888, in the name of Ellen Edwards, of unlawfully uttering a counterfeit half-crown to Ellen Dann, knowing the same to be false and counterfeit.

To this charge the prisoner pleaded "not guilty."

John Smith was then called and said:

I am a sergeant of the S Division of police. I know the prisoner at the bar. I was present in this court in April, 1888. On the 23rd day of that month the prisoner was found guilty by the jury of uttering a counterfeit half-crown to Ellen Dann, well knowing the same to be false and counterfeit. She was convicted in the name of Ellen Edwards. The prisoner is the same woman. I produce this certificate of her conviction. [Certificate put in and read.] She was released on recognisance to come up for judgment if called upon.

A copy of the certificate of conviction is sent herewith. (a)

(a) The certificate was as follows: "Central Criminal Court to wit. These are to certify that at the general session of the delivery of the Queen's Gaol of Newgate, and other prisons holden for the jurisdiction of the Central Criminal Court, at Justice Hall, in the Old Bailey, in the suburbs of the City of London, on Monday, the 23rd day of April, in the year of our Lord 1888, before certain justices of our said Lady the Queen, assigned to deliver the said gaols of the prisoners therein being, Ellen Edwards was in due form of law convicted on a certain indictment against her for that she did unlawfully utter a counterfeit half-crown to Ellen Dann, knowing the same to be false



Mr. Burnie, on the part of the prisoner, submitted there was no case to go to the jury. In order to constitute a conviction there must be both verdict and judgment. Here there was no judgment, only an order empowering the prisoner to be released on entering into a recognisance to come up for judgment. By 28 & 29 Vict. c. 18, s. 6 (a), the mode of proving a previous conviction is set out, and provides that the certificate shall contain the substance and effect only (omitting the formal part) of the indictment and conviction. It is the universal practice for the clerks of arraigns and justices of the peace to set out in such certificates both verdicts and judgments. Why, if the verdict of the jury amounts to a conviction? The universal practice of such experienced Crown lawyers is entitled, like the practice of conveyancers, to the highest consideration. An interlocutory judgment is quite unknown to the criminal law; final judgment is the only judgment known to the law, that is a judgment followed by sentence. *Reg. v. Miles* (24 Q. B. Div. p. 423), although at first sight it may seem to be an authority to the contrary, when examined, strongly supports this view, because in this case judgment was entered *ipsissima verba* of the Summary Jurisdiction Act. If this case had been dealt with in 1888 under the protection of the First Offenders Act, and had followed the words of that statute, there would have been a judgment. This case was not so dealt with, but the prisoner was released on recognisance under the common law powers from time immemorial vested in a judge of oyer and terminer and general gaol delivery. It is plainly laid down in Hawkins' Pleas of the Crown, p. 33, and Hale's Pleas of the Crown, p. 684, that there can be no conviction without judgment, and this would seem to follow from the passage in Chitty on Criminal Law (1816), vol. 1, p. 725 and p. 736. The point was fully considered in 1844 by the full Court of Common Pleas in *Burgess v. Boetefeur and Brown* (13 L. J. 122, M. C.), and the Court were unanimous that there can be no conviction without judgment.

Mr. Partridge, for the Crown.—*Burgess v. Boetefeur and Brown* has been distinguished in a recent case tried before Sir James Stephen, viz., *Jephson v. Barker* (3 Times L. Rep. 40), in 1890, and referred to in Stroud's Judicial Dictionary. All through the Coinage Act the word "conviction" is plainly used in the sense of verdict.

I entertained very great doubt on the point, but thought it safer to follow Sir James Stephen and rule that there was a case for the consideration of the jury, and leave this Court to determine authoritatively as to what constitutes a "conviction." It is evident Sir James Stephen was not himself

and counterfeit, against the statute, &c., and against the peace, &c., and the said Ellen Edwards was thereupon ordered to find one surety in the sum of twenty pounds for her appearance to hear judgment when called upon.—Dated the 30th day of Jan., 1894.—H. K. AVONRY, Clerk of the said court."

(a) This should no doubt have been 24 & 25 Vict. c. 99, s. 87.

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free from doubt, for he stayed execution to enable the point to be reconsidered in the Court of Appeal, but the case was not proceeded with. The point is from a practical point of view one of great importance, as the practice of releasing convicted persons on simple recognisance is a very general and growing one, and the protection of the First Offenders Act is of very limited scope. The jury found the prisoner was the same person named in the certificate, and I respited judgment, and released the prisoner on bail. The question for the court is whether upon the facts before set out, the prisoner could be properly convicted of felony.

By sect. 9 of 24 & 25 Vict. c. 49, it is enacted that :

Whosoever shall tender, utter, or put off any false or counterfeit coin resembling, or apparently intended to resemble, or pass for any of the Queen's current gold or silver coin, knowing the same to be false and counterfeit, shall . . . be guilty of a misdemeanour.

By sect. 12 of the same Act, it is enacted that :

Whosoever, having been convicted, either before or after the passing of this Act, of any such misdemeanour, or crime and offence, as in any of the last three preceeding sections mentioned, or of any felony or high crime and offence against this or any former Act relating to the coin, shall afterwards commit any of the misdemeanours or crimes and offences in any of the said sections mentioned, shall . . . be guilty of felony.

And by sect. 37, it is provided that :

Where any person shall have been convicted of any offence against this Act, or any former Act relating to the coin, and shall afterwards be indicted for any offence against this Act committed subsequent to such conviction, it shall be sufficient in any such indictment, after charging such subsequent offence, to state the substance and effect only (omitting the formal part) of the indictment and conviction for the previous offence ; and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for the previous offence, purporting to be signed by the clerk of the court or other officer having or purporting to have the custody of the records of the court where the offender was first committed, or by the deputy of such clerk or officer, shall, upon proof of the identity of the person of the offender, be sufficient evidence of the previous conviction, without proof of the signature or official character or authority of the person appearing to have signed the same, or his custody or right to the custody of the records of the court.

*Burnie*, on behalf of the prisoner, submitted first, that the word “conviction” strictly means the judgment of the Court, and not the verdict of the jury, though it might in ordinary language be so considered, and that this being a penal statute the word was to be construed in its strict legal sense. Secondly, that even assuming the word to mean the verdict of the jury, it was necessary for the prosecution to prove what the final judgment of the court was, for *non constat* that it was in accordance with the verdict, or that such verdict was not set aside. All that the prosecution had done was to prove an order, not a judgment of the court, and there was a great difference between an order and the judgment of the court. In *Burgess v. Boetefeur and Brown* (8 Scott's New Rep. 194 ; 7 M. & G. 481 ; 13 L. J. 122, M. C.) in an action under 25 Geo. 2, c. 36, s. 5, by an inhabitant who had given information as to the keeping of a

disorderly house, in consequence of which the keeper of the house was indicted and pleaded guilty, but was not brought up for judgment until some time afterwards, it was held that there had been no conviction until sentence was pronounced. In the course of his judgment Tindal, C. J. said, "Undoubtedly 'conviction' is *verbum equivocum*; it is used sometimes to denote the verdict of the jury, and at other times in its strict legal sense to denote the judgment of the Court." This being so, it was incumbent upon the Court to place the construction upon the word which was most favourable to the prisoner. In *Reg. v. Ackroyd* (1 C. & R. 158) Cresswell, J. held that a certificate of a previous conviction under 7 & 8 Geo. 4, c. 28, s. 11, must state that judgment was given. Here there was no judgment shown by the certificate, merely an order that the prisoner should come up for judgment when called upon. It therefore showed, so far as it showed anything, that no judgment had ever been given. Again, in *Reg. v. Stonnell* (1 Cox C. C. 142), Patteson, J. held that a certificate of a previous conviction for felony was not admissible unless it set forth not only the fact of the prisoner's conviction, but also the judgment of the Court thereon. So, too, in Hale's *Pleas of the Crown*, vol. 1, p. 685, is the following: "By conviction, I conceive, is intended not barely a conviction by verdict, where no judgment is given, but it must be a conviction by judgment." The form of conviction runs, "It was thereupon considered by the Court," and where the entry upon a record was merely "it was ordered" the Court held that there had been no judgment: (*Rea v. Kenworthy*, 1 B. & C. 711.) In *Jephson v. Barker and another* (3 Times L. Rep. 40) the Court held that where the keeper of a disorderly house had merely been bound over to come up for judgment if called upon, there had been sufficient conviction to satisfy 25 Geo. 2, c. 36, s. 5; but there, as pointed out by Stephen, J., the judgment was final except in certain events, whereas here the certificate showed that there had been no final judgment, the order being to come up for judgment when called upon. He also cited *Reg. v. Miles* (24 Q. B. Div. 423), as showing what a final judgment was.

*Sutton* and *Partridge*, for the prosecution, were not called upon.

HAWKINS, J. delivered the judgment of the Court as follows:—The Lord Chief Justice and my learned brothers have asked me to deliver judgment in this case on their behalf as well as my own, and I have no difficulty in expressing my opinion that this conviction should be affirmed; and affirmed on the very simple ground that the two sects. 9 and 12 of the Coinage Offences Act, 1861, show clearly what construction should be placed on the word "conviction" in sect. 18. It is unnecessary therefore to decide any of the questions which have been so ably argued by Mr. Burnie. Now sect. 9 of the Act enacts that whosoever shall put off any false or counterfeit coin shall be guilty of a misdemeanour, and being convicted thereof, that is to say, being

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found guilty of the misdemeanour, shall be liable to be imprisoned. The sentence was to follow the conviction. It is clear, therefore, that the intention of the Legislature in enacting this was that, if a person was found guilty of an offence within the section, the Legislature meant that to be treated as a conviction, and used the word “convicted” as meaning having been found guilty. In this case the prisoner was clearly found guilty, for, on looking at the certificate, it shows that. It is true that there is no mention in it of an actual judgment or sentence, but that she had been found guilty the certificate established beyond all question. Now the prisoner is indicted under sect. 12 of the Coinage Offences Act, 1861, which creates this new offence, and enacts that whosoever having been convicted of any such misdemeanour, or crime and offence, as in any of the last three preceding sections mentioned, that is to say, sects. 9, 10, and 11, shall afterwards commit any of the misdemeanours, or crimes and offences, in any of the said sections mentioned, shall be guilty of felony. The statute therefore makes that a felony which, had it been the first occasion upon which the prisoner had been convicted, would have been a misdemeanour. The prisoner having pleaded guilty to the charge, in order to prove the previous conviction the certificate was put in, and was admitted without objection. Now that certificate shows undoubtedly that the prisoner had been previously convicted. Such conviction was under sect. 9, and she pleaded guilty to having committed a similar offence to that of which she had been convicted under sect. 9. It therefore seems to us that she comes directly within the language of the 12th section, and is guilty of the felony of which it is stated in the case she has been convicted. It seems to me and to my learned brothers that the case is beyond all argument when you come to read sects. 9 and 12. The conviction must therefore be affirmed.

*Conviction affirmed.*

Solicitor for the prosecution, *The Solicitor to the Treasury.*

Solicitor for the prisoner, *T. O. Evans.*

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## QUEEN'S BENCH DIVISION.

*July 24 and 30, 1894.*

(Before MATHEW, J.)

REID v. WILSON AND WARD.

REID v. WILSON AND KING. (a)

*Penalties—Sunday observance—Lectures on entertaining subjects on Sundays—Nature of debates prohibited—"House opened or used for public entertainment or amusement"—Disorderly house—Liability of opener of meeting and licensee of house—Lord's Day Observance Act, 1781 (21 Geo. 3. c. 49), ss. 1, 2.*

*Sect. 1 of the Lord's Day Observance Act, 1781, enacts that, "any house, room, or other place which shall be opened or used for public entertainment or amusement on any part of the Lord's Day, and to which persons shall be admitted by the payment of money, shall be deemed a disorderly house or place," and penalties are therein imposed upon (amongst other persons) the "keeper" of the same, and upon the person "managing and conducting such entertainment or amusement," and upon the person acting as "master of the ceremonies" of any such meeting, or as "chairman" of any meeting for public debate.*

*In an action for penalties under this Act in respect of Sunday-evening lectures on entertaining subjects to which the public were admitted on payment of small sums, but which were not given for the purposes of profit, the jury having found that the hall which was hired for the lectures was, on the occasion in question, "a place open and used for public entertainment or amusement:"*

*Held, that a person who had taken the chair at the lecture, introduced the lecturer, and then had taken his place amongst the audience, was not liable to penalties under the Act, either as "master of the ceremonies," or as "manager or conductor" of the entertainment, or as "chairman" of a debate within the meaning of the section; also that a person to whom the licence for the use of the hall had been granted by the authorities, and who, on behalf of the owner, had sanctioned the letting of the hall, was not liable as "keeper" of such place. (b)*

**F**URTHER consideration by Mathew, J. in two actions tried before him with a special jury on the 28th day of June.

(a) Reported by W. W. ORR, Esq., Barrister-at-Law.

(b) The above decision was affirmed by the Court of Appeal, see post, and 71 L. T. Rep. 789; (1894) W. N. 211.

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 21 Geo. 3,  
 c. 49, ss. 1, 2.*

The actions were brought to recover penalties alleged to have been incurred by the defendants under sect. 1 of the Act 21 Geo. 3, c. 49 (an Act for preventing certain abuses and profanations on the Lord's Day called Sunday).

Sect. 1 of 21 Geo. 3, c. 49, enacts :

Whereas certain houses, rooms, or places, within the cities of London or Westminster, or in the neighbourhood thereof, have of late frequently been opened for public entertainment or amusement upon the evening of the Lord's Day, commonly called Sunday; and at other houses, rooms, or places within the said cities, or in the neighbourhood thereof, under pretence of inquiring into religious doctrines, and explaining texts of Holy Scripture, by persons unlearned and incompetent to explain the same, to the corruption of good morals, and to the great encouragement of irreligion and profaneness; be it enacted: that any house, room, or other place, which shall be opened or used for public entertainment or amusement, or for publicly debating on any subject whatsoever, upon any part of the Lord's Day called Sunday, and to which persons shall be admitted by the payment of money, or by tickets sold for money, shall be deemed a disorderly house or place; and the keeper of such house, room, or place shall forfeit the sum of two hundred pounds for every day that such house, room, or place shall be opened or used as aforesaid on the Lord's Day, to such person as will sue for the same, and be otherwise punishable as the law directs in cases of disorderly houses; and the person managing or conducting such entertainment or amusement on the Lord's Day, or acting as master of the ceremonies there, or as moderator, president, or chairman of any such meeting for public debate on the Lord's Day, shall likewise, for every such offence, forfeit the sum of one hundred pounds to such person as will sue for the same.

A penalty of fifty pounds is imposed upon "doorkeepers, servants, or other persons" who shall collect or receive money or tickets, or deliver out tickets for admitting persons to such house, room, or place on the Lord's Day.

Sect. 2 enacts :

That any person who shall at any time hereafter appear, act, or behave him or herself as master or mistress, or as the person having the care, government, or management of any such house, room, or place as aforesaid, shall be deemed and taken to be the keeper thereof . . . notwithstanding he or she be not in fact the real owner or keeper thereof.

The facts and arguments are fully set out in the written judgment of the learned judge.

Sir *R. E. Webster*, Q.C. and *C. Chapman* for the plaintiff.

*Robson*, Q.C. and *Corrie Grant* for the defendants.

*Cur. adv. vult.*

*July 30.*—The following written judgment was delivered by

MATHEW, J.—These were actions to recover penalties for acts alleged to have been done in contravention of 21 Geo. 3, c. 49. The facts that led to the litigation were these: A number of leading citizens at Leeds had formed themselves into a society for the purpose of giving on Sunday evenings, lectures on art, science, literature, and sociology. The public was admitted on payment of small sums, but the lectures were not intended for purposes of profit. A hall called the Coliseum was hired by the society, and a number of lectures was given, in respect of two of which the present proceedings were instituted. There was no evidence that any of the lectures before those in question were within the prohibitory clauses of the Act, but it was said that on the 7th and 21st days of January of this year the lectures were



of a forbidden character, and rendered the defendants liable to the penalties sought to be recovered. On the 7th day of January Mr. Villiers gave a lecture on "Chicago past and present," with a description of the recent exhibition called "the World's Fair." The lecture was illustrated by lime-light illustrations of the places and persons described. The second lecture on the 21st day of January was delivered by Mr. Max O'Rell on the characteristics of the three nations, England, Ireland, and Scotland. The defendant Mr. Ward, who was mayor of Leeds and president of the society, took the chair at the first lecture. At the second, the defendant Mr. King was chairman. On each occasion the chairman introduced the lecturer and then left the platform and took his place amongst the audience. Mr. Wilson, a defendant in both actions, was a solicitor. He had no personal interest in the Coliseum, nor was he shown to have had any knowledge of the character of the lectures proposed to be given. The hall belonged to a limited company in liquidation. Mr. Wilson had been secretary to the company, and afterwards acted as solicitor to the liquidator. It had been necessary to obtain from the local authorities a licence for the use of the hall, and that licence had been granted to Mr. Wilson, and it was admitted that the terms of the licence had not been departed from. A Mr. Watson, who was manager of the hall for the company, had agreed with the society as to the terms on which the hall was let, and Mr. Wilson, on behalf of the liquidator, had sanctioned the arrangement. At the trial of the actions, the jury came to the conclusion that the hall, upon the occasions in question, was a place open and used for public entertainment or amusement, and, upon the evidence given as to the highly-diverting means by which any information contained in the lectures was imparted, this conclusion seemed reasonable. After the verdict, the objection was taken by the counsel for the defendants that there was no evidence that the defendants had so acted as to bring themselves within the penalty clauses, and the case was reserved for further consideration. On the argument it was urged on the one hand that, upon the facts which were not in controversy, the liability of the defendants was established, and the judgment should be entered for the plaintiff; while, on the other hand, it was contended that the defendants did not come within the description of those rendered liable to penalties by the Act. The following are the material provisions of the statute: [His Lordship then read the provisions of sect. 1 of the Act] (see 25 Geo. 2, c. 36, ss. 2 and 5, and 3 Geo. 4, c. 114.) It appeared from the statement of claim in each action that Wilson was proceeded against as keeper of a place used for public entertainment or amusement, and it was argued for the plaintiff that the facts that the licence had been granted to him, and that he had sanctioned the letting of the hall to the society, were conclusive upon this point. But Wilson was only the agent for the liquidator to procure a tenant or tenants for the hall. He had derived no

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*Lord's Day  
 Observance  
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 21 Geo. 3,  
 c. 49, ss. 1, 2.*

profit from the tenancy, nor had he any responsibility for the use to which the hall was put for purposes of public entertainment, so long as the provisions of the licence were observed. He was not within the description of "keeper" contained in sect. 2. [His Lordship then read the description of a "keeper," as contained in that section.] He was no more the keeper of the hall than the liquidator. A landlord of a house used by others for purposes mentioned in the statute, or a house agent who was employed to find a tenant, could not, with any regard to accuracy, be called a keeper of the house, and I am of opinion that, as against Wilson, the action fails. Then, as to the defendants Ward and King; each was sought to be made liable, not as a joint keeper of the room under sect. 2, but on the following grounds: (1) As chairman; (2) as master of the ceremonies; (3) as the person managing or conducting the entertainment or amusement. As to (1) it is clear from the section that the meeting referred to means a meeting for the purpose of profane debate on the Lord's Day. As to (2) neither defendant could be said to have been master of the ceremonies. That description is applicable to amusements of a different character, which are in no respect analogous to the lectures in question. Nor can it be said—as to (3)—that either defendant managed or conducted the entertainment or amusement. The chairman on each occasion managed, not the entertainment, but the meeting of those present at the lecture. He had no authority but that derived from the consent of the audience. It was not shown that he had anything to do with the selection of the lecturer. He could not control the gentleman who gave the entertainment, who might be amusing or dull as he thought proper. The chairman could not compel him to be either grave or gay, and any interference on his part with the lecturer on the ground that he was too entertaining would probably be resented by the meeting, and would lead to the selection of another chairman. I do not consider that either defendant is shown to have been liable on any of the foregoing grounds. I am therefore of opinion that the defendants Ward and King are not liable, and I give judgment for all the defendants with costs.

*Judgment for defendants with costs.*

Solicitors for the plaintiff, *Desborough, Son, and Prichard.*

Solicitors for the defendants, *Darley and Cumberland*, for *E. and H. Wilson*, Leeds.



## QUEEN'S BENCH DIVISION.

*Monday, June 11, 1894.*

(Before CAVE and COLLINS, JJ.)

*Re MEUNIER. (a)*

*Habeas corpus—Extradition—Political offence—Anarchism—Evidence of identity—Evidence of accomplice—Corroboration—One commitment on two charges—Extradition Act, 1870 (33 & 34 Vict. c. 52), s. 3, sub-sect. 1.*

*By the Extradition Act, 1870 (33 & 34 Vict. c. 52), the crimes of murder and manslaughter are with others made the subject of extradition, but by sect. 3, sub-sect. 1, it is provided that a fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character.*

*One M., an Anarchist, and a fugitive criminal in England from France, had been committed to prison under the Extradition Act, 1870, by one of the police magistrates, at Bow-street, with a view to his extradition to France in consequence of a requisition by the French Government for his surrender to take his trial in that country on two charges of murder, and attempt to murder in Paris, one being that by means of an explosion he had attempted to wreck a government building, and the other of causing an explosion in a public café. An application was made on behalf of the prisoner for a writ of habeas corpus for his release on the ground that the offence charged with respect to the explosion at the government building was a political offence within the meaning of sect. 3 of the Extradition Act, 1870; that there was no evidence as to identity; that the evidence against the prisoner was the evidence of an accomplice, and was uncorroborated; and that there had been only one commitment on the two charges.*

*Held, that the prisoner, being an Anarchist, did not belong to a party having a form of government of its own or which sought to impose a form of government upon another party, and that the offences with which he was charged, being directed in the main against citizens generally rather than against the government as a government, were not offences of a political character within the meaning of sect. 3 of the Extradition Act, 1870, and that consequently the writ ought not to go.*

(a) Reported by HENRY LUSH, Esq., Barrister-at-Law.

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Political  
offence—

Anarchism—

Evidence—  
Corroboration  
of accomplice  
—Separatecharges in one  
commitment

—33 &amp; 34

Vict. c. 52,

s. 3 (1).

*Also, that there was sufficient evidence of identity to enable the magistrate to commit; that a prisoner is not entitled to be acquitted because the only evidence against him is that of an accomplice or accessory after the fact, and that the fact of whether there is corroborative evidence or not is not conclusive of the duty of a magistrate, but that he has to exercise a discretion in these cases; and further, that under the Act it is not necessary that there should be a separate commitment for each offence.*

IN this case leave to issue a summons had been given by Kennedy, J., in chambers, calling upon the Secretary of State and others to show cause why a writ of *habeas corpus* should not issue to bring up the body of one Theodore Meunier, in order that he might be discharged from custody. The summons was adjourned into court.

Theodore Meunier, a French anarchist, and a fugitive from France, was arrested in London, on a warrant under the Extradition Act, 1870, on two charges of murder, and attempt to murder in Paris by means of explosive bombs. The two offences charged were committed on different occasions, one on the night of the 14th or 15th day of March, 1892, by causing an explosion at the Lobau Barracks; the other by causing an explosion on the 22nd day of April, 1894, at the Café Véry, whereby two persons were killed.

The prisoner was brought before Sir John Bridge, one of the metropolitan police magistrates, at Bow-street, who after hearing evidence on both sides, committed the prisoner under the Extradition Act, 1870. The evidence contained in depositions sent from France, and in those taken in the Bow-street Police-court showed that Meunier, who was described as a carpenter and member of a syndicate, was at the Café Véry just before the explosion.

Evidence was given by a Madame Bricout, an acquaintance and an accomplice of Meunier, which showed that he was the author of the explosion at the Café Véry.

Evidence as to identity was also given.

Application was now made on behalf of Meunier for a writ of *habeas corpus*, to discharge him on the grounds: (1) That it was not shown that the Meunier to whom the depositions taken in France referred was the Meunier who was brought before the magistrate; (2) that the evidence as to the explosion at the Café Véry was that of an accomplice, and was uncorroborated in any material particular implicating the prisoner; (3) that as regards the explosion at the Lobau Barracks, that was a political offence; (4) that there were two substantive offences, and only one commitment.

Sect. 3, sub-sect. 1, of the Extradition Act, 1870 (33 & 34 Vict. c. 52), provides as follows:

A fugitive criminal shall not be surrendered if the offence in respect of which his

surrender is demanded is one of a political character, or if he prove to the satisfaction of the police magistrate, or the court before whom he is brought on *habeas corpus*, or to the Secretary of State, that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.

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*Political*  
*offence—*  
*Anarchism—*  
*Evidence—*  
*Corroboration*  
*of accomplice*  
*—Separate*  
*charges in one*  
*commitment*  
—33 & 34  
Vict. c. 52,  
s. 3 (1).

The *Solicitor-General* (R. T. Reid, Q.C.), the *Attorney-General* (Sir John Rigby, Q.C., and *Sutton* with him), appeared to show cause against the writ.—The evidence against the prisoner was amply sufficient to justify his commitment under the Extradition Act, and the evidence of the woman who was the prisoner's accomplice, was not only sufficient in itself, but was abundantly corroborated by the other evidence.

*Burnie*, for the prisoner, contended that there was nothing to show that the prisoner was the same Meunier of whom the woman spoke in her evidence. It was not enough to receive depositions taken against the prisoner abroad and in his absence that the prisoner is of the same name; he ought to be identified. There is no physical description of Meunier, and there was no photograph of him before the magistrate. If Madame Bricout's evidence be struck out there is absolutely no evidence of identification. Madame Bricout was an accomplice, and her evidence therefore required material corroboration, but there was no real corroboration of it. If this offence had been committed in England it is clear that a judge would have advised the jury that they ought not to convict on the uncorroborated evidence of an accomplice; and the prisoner would have been acquitted; clearly, therefore, this is not a case for extradition. Sect. 10 of the Act points out that a magistrate shall not commit a prisoner under the Extradition Act unless the evidence produced is such as would justify his committal for trial if the crime of which he is accused had been committed in England. It is not sufficient that there is some evidence. This court will review the discretion of the magistrate: (*Re Oastioni*, 64 L. T. Rep. 344; (1891) 1 Q. B. 149; 60 L. J. 22, M. C.; *Re Guerin*, 60 L. T. Rep. 538; 58 L. J. 42, M. C.) As to the explosion at the Lobau Barracks it was a political offence within sect. 3, sub-sect. 1, of the Act. No words were added by the Legislature as to what constitutes a political offence, nor is there any restriction placed on the words in the Act. The plain simple meaning of the words should be taken, namely, that they refer to an offence committed against the State with a political motive, and with a political object. The explosion at the Lobau Barracks is clearly such a political offence.

CAVE, J.—I am of opinion that the writ in this case should be refused. The principal ground upon which Mr. Burnie rested his case was that there was no evidence before the magistrate of the identity of the Meunier whom he had committed to Holloway with the Meunier who is spoken of by the witnesses in the depositions sent from France. That was the point to which I think he attached the most importance. The second point was that the evidence against Meunier was that of an accomplice or

*Re MEUNIER.* an accessory after the fact, and that there was no corroboration of her evidence in any material particular. The third point was that there being two charges against the prisoner, there was only one commitment to Holloway. The fourth point was that the offence was a political offence within the meaning of those words in the Extradition Act, and not an ordinary crime. I think it is more convenient to take the second point first, and to inquire whether there was material corroboration of the evidence which no doubt rested mainly upon Madame Bricout. She gives a description of her acquaintance with Meunier, and says that some time in March he came to lodge with her and her husband, and from that date she gives a pretty particular and full account of him, and what they did together down to the time when the offence at the Café Véry was actually committed. It is important to see whether in point of fact she is corroborated with regard to this in a material particular. Now she says that during the time they were living together there arose a dispute between them owing to Meunier having broken into the place when he found it locked, and that that circumstance happened is abundantly corroborated by the evidence of Roy, the locksmith and his wife, and by the evidence of the concierge, at the place where they lived and his wife. No doubt it is said that all that might have been perfectly true, and yet that Meunier might have been perfectly innocent of the crime with which he stands charged. No doubt that is true, and if that matter stood alone there would hardly have been sufficient corroboration in a material particular to meet the general principle which Mr. Burnie invokes. But the case goes a great deal beyond that. There is a grey valise which plays an important part in this investigation. It is left by someone who cannot be precisely identified in the immediate neighbourhood of the Café Véry. Madame Bricout says that the explosive mixture was produced from that grey valise, and that Meunier had such valise is deposed to by the concierge and his wife. But further than that, there is the statement of Madame Bricout that on the Friday before the offence was committed she went to the house of one Francis in order to get clothes for disguising the identity of the prisoner Meunier, and, of course, that is far more nearly approaching the offence itself than the matter which I have spoken of before. Now, in that she is corroborated by Madame Roy, who says she saw Madame Bricout go to the house of the concierge and come away from it again with a bundle, and by Madame Scellery, who says that she saw Meunier wear the clothes which are shown to have been the clothes of Francis on Sunday and on Monday, the day when the explosion took place. Now those are very important matters, and do seem to me to corroborate in a material particular the evidence which Madame Bricout has given. It is, of course, possible to take each one of these and say, "Well, this is but a small matter," and "that is but a small matter," and "the other is only a small matter."

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*Anarchism—*

*Evidence—*

*Corroboration*

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*—Separate*

*charges in one*

*commitment*

*—33 & 34*

*Vict. c. 52,*

*s. 3 (1).*

They may all in themselves be small matters, but the whole of them taken together form very strong circumstantial evidence to show that there must at all events be a considerable amount of truth in what Madame Bricout is saying. I think that the Solicitor-General was warranted in saying that there was corroborative evidence which was sufficient for the magistrate to act upon. Before, however, passing from this point, I should like to say that in my judgment the fact of whether there is corroborative evidence or not is not conclusive of the duty of the magistrate, but he has to exercise a discretion in these cases. The law is not that a man against whom there is only the evidence of an accessory or accomplice is entitled to be acquitted; the law falls short of that. The judge must lay the evidence before the jury, though at the same time it is the practice of judges to warn the jury against acting upon the uncorroborated evidence of an accomplice. No doubt, however, the jury are in law entitled to have that evidence laid before them, and if they choose to disregard the warning of the judge, and are so satisfied of the truth of the accomplice that they will act on his testimony, I know no law which says that they shall not, nor any power of setting such a verdict aside in a Court of law. At the same time, the magistrate must of course act upon his own discretion, and if he had said, "The evidence here is that of an accomplice, there is no material corroboration, and I do not believe that any jury would act upon that testimony, and on that ground I discharge the accused," I could not say that he was wrong. On the other hand, as the learned magistrate has taken the opposite view, I am also unable to say that he is wrong. The matter must be one for the discretion of the magistrate, with which I think this Court would hardly be justified in interfering. My brother Collins reminds me that I have omitted two other matters of corroboration which seem to me also to go some way. According to Madame Bricout it was arranged that the actual perpetrator of the offence should take the explosive into the café and should then be called out by someone outside, who was thus to give him an excuse for going outside and leaving the explosive within, and there is peculiar evidence given by two witnesses, one the waiter, and the other a person who was at the café, having some refreshment there, who both say that they saw a man outside just before the explosion making signs. Each of these two witnesses thought himself to be the person to whom the signs were made, and both went out and saw the man and then found that they were mistaken. That is a peculiar corroboration no doubt of the story which Madame Bricout tells. Further, there is the statement of Madame Scellery, that after the offence had been committed she was with Meunier on a steamer, when Meunier gave her such a vivid and detailed description of the way in which the explosion had taken place as to impress her with the conclusion that he must have been a party to it himself. There is, further, the fact that later on he told her that it would be necessary for him to leave the country

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*Re MEUNIER.* for a time for reasons which he did not very fully explain, but which she appears to have taken to have referred to the explosion at the Café Véry. All these matters seem to me to be abundant corroboration, in acting upon which the magistrate rightly exercised his discretion. The next point was as to the evidence of identity. Mr. Burnie said, even if it be taken for granted that there was perfectly good evidence against a man of the name of Meunier, as having been engaged in these offences, there was no evidence that the man who was before Sir John Bridge was the man Meunier, spoken of by the witnesses. No one was called to identify him as the man to whom the witnesses in the deposition referred. That, undoubtedly, is perfectly true, but nevertheless it seems to me there was sufficient evidence of his identity to justify the magistrate in what he did. [His Lordship went through the evidence.] With regard to the question whether this is a political offence or not, it appears to me that there must be, in order to have a political offence, two distinct parties, each seeking to impose the Government of its choice upon the other, and when you have two distinct parties of that kind, then no doubt offences incidentally committed in the course of an attempt by one party to impose the Government of its choice on the other, are to be regarded as so connected with the political contest as to amount to political offences. Here, however, are not two parties, one seeking to impose its Government on the other. The party to which the prisoner Meunier belongs has no form of Government which it seeks to impose at all; it is the enemy apparently of all Governments, and its operations are directed not primarily against the Government but only incidentally, and secondarily against the members of the political body, but they are directed primarily against the members of the general body, the citizens, and apparently only casually against the Government or governing body. The offences of which anarchists are said to be, and in some cases have been proved to be, the authors, are in the main offences against the citizens generally, rather than against the Government *quâ* Government, and in my judgment such proceedings cannot rightly be classed as political offences, and so escape from the meshes of the Extradition Act. I am very clearly of opinion that the writ ought not to go on the ground of this being a political offence, because it was not a political offence within the meaning of the Extradition Act, but an ordinary crime against a private citizen, and not against members of the Government. I am of opinion, therefore, that the application fails on all grounds, and must be dismissed.

COLLINS, J.—I am entirely of the same opinion, and on the same grounds.

*Application refused.*

Solicitor for the prisoner, *T. O. Evans.*

Solicitor for the Secretary of State, *The Solicitor to the Treasury.*

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## CROWN CASES RESERVED.

*April 28, May 5 and 28, 1894.*

(Before HAWKINS, MATHEW, CAVE, GRANTHAM, CHARLES, WILLIAMS, LAWRENCE, WRIGHT, COLLINS, BRUCE, and KENNEDY, JJ.)

REG. v. DENNIS. (a)

*Unsound food—Fruit sold wholesale—Sale in bulk under condition that unsound portion be destroyed—Liability to seizure in hands of retail dealer—Questions for magistrates and jury—Bona fides of sale—Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 47.*

*In order to convict a person under sub-sect. 3 of sect. 47 of the Public Health (London) Act, 1891, of having sold for the food of man an article unfit for the food of man, it is necessary to prove that the article at the time it was found in the purchaser's possession was liable to be seized for one or other of the reasons stated in sub-sect. 1 of the section. That is to say, because being diseased, unsound, unwholesome, or unfit for the food of man, it was exposed for sale or deposited in some place over which the purchaser had control for the purpose of sale or preparation for sale.*

*Further, assuming such facts to be proved, it is a question for the magistrates or jury, having regard to all the circumstances of the sale, to say whether or not the article was intended for the food of man by the defendant when sold by him; and whether, if it was represented at the time of sale not to be so intended, such representation was made bona fide.*

*So held by the majority of the court, Mathew, J. dissentiente.*

CASE stated for the consideration of the Court for Crown Cases Reserved by the chairman of the London County Quarter Sessions as follows:—

John William Dennis was tried before me at the Quarter Sessions for the county of London, holden at the Sessions House, Newington, on the 13th day of Jan., 1894, upon an indictment (a copy of which is annexed to this case, charging him with having committed an offence under the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 47, sub-sect. (3).

1. The defendant is an English and foreign fruit and potato broker, and carries on business in Covent Garden.

(a) Reported by R. CUNNINGHAM GLEN, Esq., Barrister-at-Law.

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—

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fruit—  
Purchaser to  
destroy un-  
sound fruit—  
Liability of  
wholesale  
dealer—  
Practice—  
Questions for  
jury—Bona  
fides of sale—  
Public Health  
(London) Act,  
1891—54 & 55  
Vict. c. 76,  
s. 47.

2. On or about the 11th day of Oct., 1893, a consignment of eighty-three bags of "Grenoble" walnuts was received at the defendant's warehouse for sale on behalf of the foreign owner. One bag was taken indiscriminately from the bulk as a sample.

3. On the 21st day of Oct., 1893, ten bags of these walnuts were sold to a customer. This was the first sale made from this consignment. Later in the day, and after the sale to Charles Lyons hereinafter mentioned, eight of those ten bags were returned by the customer as bad, and exchanged for others of a different kind; the remaining two bags were kept by the customer as being good. On the 23rd day of Oct., 1893, the defendant was informed for the first time of the bad quality of the nuts, and ordered the bulk to be examined. As the result of that examination the eight returned bags and about fifteen more were by the defendant's orders destroyed, because there were not in those bags a sufficient number of good nuts to pay the cost of separating the good from the bad. What then remained of the bulk were sold to a person who promised to sort them and destroy the bad ones.

4. On Saturday, the said 21st day of Oct., 1893, Charles Lyons, a wholesale and retail fruiterer, bought twenty bags of the walnuts after examining the sample bag, but without examining the bulk, although he would have been allowed to do so if he had chosen.

5. Over the pigeon-hole of the pay desk in the shop, where the said Charles Lyons bought and paid for the walnuts, there was exhibited the printed notice a facsimile of which is annexed hereto (a).

6. The same Saturday evening, after he had taken them away, the said Charles Lyons, after shooting some of them on his stall in preparation for sale, found the major portion of the bulk of the said walnuts were bad, and endeavoured to return them to the defendant, but as it was after business hours the defendant's business premises were closed. The said Charles Lyons then tried to find a sanitary inspector, but failed to do so until the following Monday, the 23rd day of Oct., 1893, when he handed the said walnuts to the sanitary inspector for the vestry of Bermondsey.

7. On the said 23rd day of October, 1893, the said sanitary inspector took the whole of the said walnuts handed to him by the said Charles Lyons to the Southwark Metropolitan Police Court, where, after inspection, they were condemned by the magistrate as unfit for the food of man and destroyed.

8. No proceedings were taken against the said Charles Lyons with respect to the said walnuts.

(a) The notice, which was marked "B.," was in the following terms, viz. :—Special Notice to Buyers.—Original packages of either fruit or vegetables, the contents of which may partly prove unsound, either from delay in transit or any other cause, are sold on the express condition that the "buyers" sort the said contents, and destroy the unsound portion before being offered to the public.—W. DENNIS AND SONS.



9. The defendant and his witnesses proved that it was the practice of the fruit brokers in Covent Garden to sell foreign fruit in the original packages in which it comes from abroad without any examination of the contents, except by opening one or more samples according to the size of the consignment, and by seeing whether the outsides of the packages showed any signs of damage and by testing the weight and by the smell. But the buyers might examine the bulk if they chose. That packages were frequently sold, although the brokers knew or had reason to believe that some part of the contents was bad and unfit for the food of man, but that as between the brokers and the buyers it was the buyers' duty to see that the bad fruit was separated from the good and destroyed, and that none of it was offered to the public. It was also stated by those witnesses that there was neither time, nor room, nor skilled labour enough obtainable at Covent Garden to enable the brokers to sort the good fruit from the bad before it was sold by them.

10. The fruit in the sample bag of walnuts was good, and at the time the consignment was received there was nothing in the external appearance of the packages in the bulk or in their weight or smell to indicate that the contents were bad. These were the cheapest quality of walnut the defendant had in stock.

11. The defendant admitted that he knew most of the bags in this consignment would in all probability contain some walnuts which were bad and unfit for the food of man, and that he sold them with that knowledge. He said he should not have sold them if he had known they were so bad as they turned out to be, but that he would sell walnuts when there was a sufficient quantity of good nuts in the packages to make it profitable to sort the good from the bad; if there was a less quantity of good nuts than that he would have the whole package destroyed. He also admitted that a larger proportion of walnuts had turned out bad than usual that season, and that the class of walnuts in question having had their husks removed by means of chemicals, were liable to go bad quickly, sometimes in two or three days. At the date of the sale to Lyons these walnuts had been in stock ten days.

12. On those facts it was contended by counsel for the defendant: (1) that no offence under sect. 47 (3) of the said Act had been shown, because that sub-section only applied where the person in whose possession the articles in question were found had himself committed an offence under sect. 47 (2); (2) that if the defendant had contracted with Lyons that Lyons should (in accordance with the notice "B") sort out and destroy the unsound fruit from the walnuts sold to him, the defendant would not be guilty of the offence charged, and that the said Notice "B" was evidence of such a contract; and (3) that the jury should be asked whether the defendant, when he sold the packages of walnuts knowing there were some bad ones among them, intended the bad or only the good ones for the food of man.

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*Unsound food*  
—*Sale of*  
*fruit—*  
*Purchaser to*  
*destroy un-*  
*sound fruit—*  
*Liability of*  
*wholesale*  
*dealer—*  
*Practice—*  
*Questions for*  
*jury—Bona*  
*fides of sale—*  
*Public Health*  
*(London) Act,*  
*1891—54 & 55*  
*Vict. c. 76,*  
*s. 47.*

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1894.

Unsound food  
—Sale of  
fruit—  
Purchaser to  
destroy un-  
sound fruit—  
Liability of  
wholesale  
dealer—  
Practice—  
Questions for  
jury—Bona  
fides of sale—  
Public Health  
(London) Act,  
1891—54 & 55  
Vict. c. 76,  
s. 47.

13. I, however, overruled contentions 1 and 2, and declined to leave the question (3) to the jury.

14. I directed the jury to find the defendant guilty if they found that he sold the walnuts to Lyons and that the walnuts were at the time of sale unfit for the food of man, unless the defendant proved that at the time he sold them he did not know, and had no reason to believe, they were unfit for the food of man. I further told the jury that the defendant could not contract himself out of the liability to a penalty under the Act by agreeing with Lyons to sort out and destroy the bad nuts, and that they must altogether disregard the said notice marked "B."

The jury returned a verdict of "Guilty," and I postponed judgment and discharged the defendant on recognizance of bail to appear to receive judgment at the session next following the determination of this case.

Sect. 47 of the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), enacts that.

1. Any medical officer of health or sanitary inspector may at all reasonable times enter any premises and inspect and examine (a) any animal intended for the food of man which is exposed for sale, or deposited in any place for the purpose of sale or of preparation for sale, and (b) any article, whether solid or liquid, intended for the food of man, and sold or exposed for sale, or deposited in any place for the purpose of sale or of preparation for sale, the proof that the same was not exposed or deposited for any such purpose, or was not intended for the food of man, resting with the person charged; and if any such animal or article appears to such medical officer or inspector to be diseased, or unsound, or unwholesome, or unfit for the food of man, he may seize and carry away the same, himself or by an assistant, in order to have the same dealt with by a justice.

2. If it appears to a justice that any animal or article which has been seized, or is liable to be seized under this section, is diseased, or unsound, or unwholesome, or unfit for the food of man, he shall condemn the same, and order it to be destroyed, or so disposed of as to prevent it from being exposed for sale or used for the food of man; and the person to whom the same belongs, or did belong at the time of sale or exposure for sale, or deposit for the purpose of sale or of preparation for sale, or in whose possession or on whose premises the same was found, shall be liable on summary conviction to a fine not exceeding 50*l.* for every animal, or article, or if the article consists of fruit, vegetables, corn, bread, or flour, for every parcel thereof so condemned, or, at the discretion of the court, without the infliction of a fine, to imprisonment for a term of not more than six months, with or without hard labour.

3. Where it is shown that any article liable to be seized under this section, and found in the possession of any person, was purchased by him from another person for the food of man, and when so purchased was in such a condition as to be liable to be seized and condemned under this section, the person who so sold the same shall be liable to the fine and imprisonment above mentioned, unless he proves that at the time he sold the said article he did not know, and had no reason to believe, that it was in such condition.

Sir Henry James, Q.C. (*Finlay*, Q.C. and *R. D. Muir* with him), on behalf of the defendant, submitted that the enactment in question did not prevent the sale of good and bad walnuts provided the good only were sold for the food of man; and the notice being evidence that the bad walnuts were not sold for the food of man should have been allowed to go to the jury. The contention on the part of the prosecution would effectually destroy the sale of all tinned goods, inasmuch as it is known that a certain proportion of such goods in most cases proves to be bad. It was essential that at the time the goods are seized they

should be exposed for sale in an unsound condition: and these walnuts had not been found in the possession of the defendant when exposed or in preparation for sale. The placing of the notice before the purchaser must have been some evidence that he had knowledge that the walnuts were not sold as being good throughout, and a duty was by virtue of the contract imposed upon Lyons by the defendant of separating the unsound walnuts from the sound, and of not using the unsound for the food of man: (*Symonds v. Pain and others*, 30 L. J. 206, Ex.; *Sandys v. Small*, 3 Q. B. Div. 449; *Vinter v. Hind*, 10 Q. B. Div. 63.)

*Elliott*, in support of the conviction, submitted that sect. 47 (3) of the Public Health London Act, 1891, was passed in order to meet such a case as the present, the words used being wider than those in sects. 116 and 117 of the Public Health Act, 1875, upon which the decision in *Vinter v. Hind* (*ubi sup.*) turned. The bags of walnuts were sold by the defendant with the knowledge that a certain proportion of the walnuts would, in all probability, prove to have been unfit for human food at the time they were sold; and the burden of proof lay upon him to prove that at the time he sold the walnuts he did not know and had no reason to believe that they were unfit. The notice spoke for itself, and the jury had nothing to do with its meaning. The liability to seizure under the section attached during the whole period between the receipt of the walnuts by the defendant and their being placed by Lyons upon his stall. The prosecution was not obliged to show fraudulent intent on the defendant's part, the Act being passed for the protection of the public and making it an offence if that which was unfit for the food of man was sold as fit. The question had been properly put to the jury, and they having found the defendant guilty of the offence charged in the indictment it was to be inferred that they found that the walnuts were purchased by Lyons from the defendant for the food of man, they being when so purchased in such a condition as to be liable to be seized and condemned under the section.

*Cur. adv. vult.*

*May 28.*—The following judgments were read:

**KENNEDY, J.**—I have come to the conclusion that this conviction cannot be sustained. In the first place, in order to establish any case against a seller, such as the accused in this case was, under the statute 54 & 55 Vict. c. 76, s. 47, sub-sect. 3, it is in my judgment, clearly necessary, from the terms of the sub-section itself, to prove that the article found in the possession of the purchaser was an article "liable to be seized under this section." Sub-sect. 1 tells us what is meant by the term "liable to be seized." The article is "liable to be seized" only if it is an article (a) intended for the food of man; (b) sold or exposed for sale or deposited in any place for the purpose of sale or preparation for sale; (c) appearing to the inspector to be diseased, or unsound or unwholesome, or unfit for the food of man. The facts of this case show, in my view, that

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the second of these essential elements did not exist. It is not the fact that when the walnuts in the possession of Lyons were, at the instance of Lyons himself, taken by the inspector, they were either sold or exposed for sale, or deposited in any place for the purpose of sale or preparation for sale. Therefore they did not constitute an article "liable to be seized" within the meaning of the section. In the second place, the conviction of a seller under sub-sect. 3 cannot be justified, unless the buyer is shown to have purchased the article "for the food of man." In order to negative this, evidence was adduced by the defendant as to the exhibition of the special printed notice to buyers, and as to the practice of fruit brokers. It was evidence no doubt, to be considered by the jury only in connection with all the other circumstances of the case. It was for the jury to consider whether the transaction, which appears otherwise to have been a sale by sample of articles commonly used for human food, was really made subject to the terms of the notice, and what weight should be given to the alleged trade practice, and then to use their conclusions on these points—with all other matters found to their satisfaction—in determining whether the walnuts were or were not purchased for the food of man. Speaking for myself, I should say that if the evidence in question was believed, a jury might not improperly find that Lyons bought, and the accused sold, the sound walnuts and the sound walnuts only, for the food of man, and the unsound for destruction—subject, of course, to Lyon's right to reject the whole lot, if upon inspection he found the bulk inferior to sample, or to prefer a claim for damages for breach of warranty. But, be this as it may, it could not, in my judgment, be right to direct the jury, as from paragraph 14 of the case, the learned chairman appears to me in effect—by limiting their consideration to questions as to the fact of the sale by the defendant, the condition of the walnuts when sold, and the defendant's knowledge and belief as to their condition—to have directed the jury that they need not trouble themselves to find whether or not the walnuts were purchased from the accused for the food of man; and further to direct the jury, as he did, that they must disregard the evidence of the terms, as to sorting out and destroying the bad walnuts, upon which the transaction between the defendant and Lyons was, according to the defendant's contention, effected. It seems to me, looking at paragraph 14 of the case, impossible to infer, as the learned counsel who appeared before us to support the conviction, asked us to infer, that the jury meant by their verdict to find that the walnuts were purchased from the accused for the food of man. The verdict of "guilty" in this case was, in my view, a verdict which, in consequence of the chairman's direction, was arrived at without a finding by the jury of that which was essential to the proof of the offence charged, and therefore the conviction on this second ground also ought, in my judgment, to be quashed.

GRANTHAM, J.—What is the true way of testing such a case as

this? Not to first argue what crimes or wrongs it is supposed were intended to be reached by the statute, and then to endeavour to make the facts of the case fit the supposed intention of the statute, but first to understand exactly what the facts are, and then see if the statute as drawn was intended to apply, and does in fact apply to those facts. Applying that principle, let us see what the facts are. A fruit broker receives an intimation from a foreign consignor, probably through his shipping agent, or it may be only from the carman delivering the goods, that a consignment consisting of a number of packages or bags containing walnuts has been forwarded from Grenoble to him, as a fruit broker, for sale. The walnuts, when despatched from Grenoble, were, no doubt, intended for human food, and were fit for human food, but the broker (the defendant) knows from his experience that, by the time any such consignment has reached England, some of the contents of some of the packages will in all probability be bad, or, as we will call it, unfit for human food, and that, in the interval between his selling them and his purchaser retailing them out, a still larger proportion will have become bad, either from the character of the fruit, the season of the year, or sudden changes of temperature. What, under these circumstances, does he do? It must not be forgotten that it is never intended that the broker is to be the retailer. He has only to find someone who will take these packages as they are, get the contents ready for market, and then retail them. The quantity is not, or may not be, sufficient to have an auction, with catalogue and conditions of sale attached, or it may be that there is not time, so he sells them as soon as he can, under a notice to everyone who buys that all articles sold in original packages (*i.e.*, that these walnuts) are sold on the express condition that the person taking these packages, or buying these packages, is not to sell for human food any of the walnuts that are bad; those he must undertake to destroy. (He might have said, "or use for some other purpose.") In other words, practically he says, "As we both know that probably some of the walnuts will be bad, and some good, you must separate the good from the bad, and destroy the bad, and, as you buy the packages of me with that liability attached, I expect you to give me only such a price for the good walnuts as will enable you to afford the expense of this sorting and destruction." The buyer therefore fixes the price he will give accordingly, and the price he gives, *plus* the cost he is put to in sorting, represents the value of, and the cost to him of, the good walnuts. As it is admitted that the broker in this case can only be convicted under sub-sect. 3 of this section, because the walnuts had passed into the hands of the purchaser, it is necessary to see what his purchaser does. After having bought the walnuts, he turns several of the bags out, and finding many more bad than he expected, he never attempts to sort or sell even the good, much less the bad, but bags them up again, and finding the broker's place of business closed, avails himself of the pro-

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visions of sub-sect. 8 to get the local authority to destroy them, and they are destroyed. Now, remembering that no article is liable to be seized that has not been exposed for sale for human food, how is it possible to say that either the broker or his purchaser exposed these walnuts for sale for human food? for the broker distinctly contracted with his purchaser that the bad walnuts should be destroyed, and the purchaser did accordingly carry out his contract and had them destroyed. Let us see now what the language of the 3rd sub-section is, and we shall then find that under no portion of that sub-section can the defendant be convicted. Sect. 47, sub-sect. 3: "Where it is shown that any article liable to be seized under this section and found in the possession of any person, was purchased by him from another person for the food of man," &c., &c. There are four distinct propositions therein referred to, to complete the crime: first, the liability to seizure; second, the finding in the possession; third, the purchase; fourth, the purchase for the food of man. First, these walnuts were never "liable to be seized," for, as we have seen, Mr. Lyons had never intended these bad ones for sale for human food, but even if he had so intended—secondly, they were never "found in the possession" of Mr. Lyons, because he had given them up to be destroyed; thirdly, they were never purchased by him from the defendant; as I have shown, it was only the good ones that were purchased; fourthly, if purchased, they were never purchased "for the food of man," for no one had determined at the time of giving them up for destruction, how many, if any, might be fit for food. The contract between broker and purchaser was a contract to destroy the bad ones, and the purchaser, as I have before shown in my judgment, did carry out his contract. If he did not, how can the broker be convicted of a crime because his purchaser broke a civil contract? Many instances were referred to during the course of the argument, and many more might have been given, to show how impossible it is for foreign fruit brokers to sell fruit in original packages in any other way than is adopted as mentioned in this case. The instance I mentioned of the orange broker seemed to me the most familiar and most conclusive. Hardly a case is sold that has not some bad ones in it. For how many bad ones is a broker to be convicted or sent to prison? It has been said that he would not for five or six bad oranges, but, if not for five or six, would he be for ten, or twenty, or fifty, or how many? I do not say under no circumstances could a broker be convicted, but he could only be convicted if he had an intention to commit the offence, viz., selling articles of food, unfit for, and sold for human food, and, as that is a question of fact, that question must be left to the jury. Besides all this, how can it be said that a broker cannot contract himself out of a liability, by arranging with his purchaser to destroy the bad walnuts, as the learned chairman stated? His liability is determined by his conduct, and his conduct is determined by his contract of sale. If the purchaser,

therefore, faithfully carries out his contract to destroy, how can any liability attach, and even if he commits a breach of his admitted contract to destroy, how can the broker be convicted? As the learned magistrate refused in this case to put the question of intent to the jury, the indictment must be quashed on that ground alone, even if not on all or any of the grounds I have mentioned. It has been argued that the object of the Act was to prevent the costermonger from being led into temptation to do wrong. You might as well say that anyone carrying a watch in his pocket attached to a gold chain should be convicted of stealing a watch because of the temptation it offers to a pick-pocket to steal the watch. No person acting honestly and *bonâ fide* can by our law be criminally punished because some one else acts dishonestly; but in this case no one acted dishonestly, if the facts as stated were true, and their truth does not seem to have been disputed. For these reasons, in my judgment, this conviction must be quashed.

CABE, J.—This is a case stated by the chairman of the London County Sessions upon the trial of one John William Dennis, who was tried and convicted upon an indictment charging him with having committed an offence under the Public Health (London) Act, 1891, s. 47, sub-sect. 3. [The learned judge here read the first three sub-sections of sect. 47, which are set out *ante*, p. 24, stated the facts, and continued as follows:] The first contention on behalf of the defendant was founded on the facts above stated, and was that sub-sect. 3 only applied when the person in whose possession the articles in question were found had himself committed an offence under sub-sect. 2. The objection is not very artistically stated; but I think it amounts to this, that the article must be liable to seizure in the possession of the person with whom it is found: and that it is not sufficient that the walnuts were found in the possession of Lyons, unless they were then liable to be seized. Now, to make the walnuts liable to seizure in the possession of Lyons two conditions must have occurred. The walnuts must have been intended for the food of man, and sold, or exposed for sale, or deposited in some place for the purpose of sale or preparation for sale. It is true that the proof that these two conditions did not occur is thrown on the party charged. But the evidence given at the trial did, I think, establish that these two circumstances did not occur while the walnuts were in the possession of Lyons, and did not exist when the walnuts were found in his possession. As soon as he discovered the quality of the walnuts he was minded to reject them as not equal to sample; and it is clear that, when he handed them over to the sanitary inspector on the Monday, if they can be said to have been then found in his possession, they certainly were not then intended for the food of man. It was, however, contended on behalf of the prosecution that it is sufficient if the liability to seizure existed before the walnuts came into the possession of Lyons; and, as the learned chairman has not stated the grounds

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on which he overruled the objection of the defendant, this contention is clearly open to the prosecution. By sub-sect. 3 it must be shown that an article liable to be seized under that section, and found in the possession of any person, was purchased by him of another person for the food of man. Proof, however, that the article was unfit for the food of man will be sufficient *primâ facie* proof of its liability to seizure, the proof that it was not exposed for sale, or deposited for the purpose of sale or preparation for sale, or was not intended for the food of man, resting with the person charged. But under sub-sect. 3 the prosecution must go on to show that, when the article was so purchased, it was in such a condition as to be liable to be seized and condemned under that section; and the proof of this rests on the prosecution, which seems to me to show that the liability to seizure referred to in the first line of sub-sect. 3 is not the same as the liability to seizure and condemnation referred to in the fourth line. It is said, however, that the word "sold" in clause (b) of sub-sect. 1 imports that the article may be liable to seizure in the hands of an innocent retail purchaser. Sub-sect. 3 appears to have been inserted to meet the case of *Vinter v. Hind* (10 Q. B. Div. 63); and the word "sold" was probably inserted for the same purpose. But in *Vinter v. Hind* the purchaser apparently intended to use the meat for the food of man at the time when it was seized; while the question here is whether the seller can be convicted where the purchaser did not intend to use the article sold for the food of man at the time when it was found in his possession. Upon the best consideration I can give to this somewhat obscurely worded section, I think the contention for the defendant ought to prevail, and that the walnuts in this case were not liable to seizure, which by sub-sect. 3 is made a condition precedent to the liability of the vendor to conviction under that section. These considerations dispose of the case, and I could have wished not to express any opinion on the other points; but, as my brethren, or some of them, have thought it necessary to take those points into consideration, I feel bound to give my opinion on the matter. I do not understand the majority of the Court to say that there was not evidence on which the defendant might properly have been convicted, but merely to think that the summing-up of the chairman, as given by him, was not sufficient. I think, however, that we are limited to the objections taken by the defendant's counsel, and that the summing-up is only stated in the case so far as was material for the consideration of those objections, and, for the reasons given by my brother Mathew as to this part of the case, I think that these objections are groundless, and, had the case rested there, I should have been of opinion that the conviction was good. I hold, however, that the first objection is fatal, and that, for the reasons I have given on that part of the case the conviction must be quashed. One lesson at least must be learnt from this case, and that is that those who state cases for the consideration of this Court should limit them-



selves to stating the objections taken by the counsel for the defendant, and then ruling upon them, and should not attempt to give a summary of their direction to the jury, which it will in general be easy to show was inexact or insufficient in some particular or other, owing to its being only a summary made with reference to the objections taken, and not a full statement.

MATHEW, J.—In this case proceedings were taken against the defendant under sect. 47 of the Public Health (London) Act, 1891, on the ground that he had sold to a dealer named Lyons articles which, within the meaning of that section, were liable to be seized and condemned as unfit for human food. From the statements in the case it would seem to be clear that the articles in question, viz., walnuts, at the time when they were sold by the defendant, were intended to be used for food. The walnuts were sold by sample, and it was not suggested at the trial that the sample was one of unsound walnuts. It was not, and could not be, denied that the walnuts, when sold, were unfit for food. They were seized by a sanitary inspector, and condemned, and no attempt was made to show that the magistrate who made the order for their condemnation had either been misled or mistaken as to their condition. The sub-sect. 3 of sect. 47 is in the following terms: [The learned judge here read 54 & 55 Vict. c. 76, s. 47, sub-sect. 3, which is set out *ante*, p. 24, and continued as follows:] It was argued for the defendant that the walnuts were not “liable to be seized” under the section, because when they were condemned the buyer had no intention to expose them for sale. But I see no reason to doubt that, at the time when the defendant sold to Lyons, the walnuts were liable to be seized under the section, on the ground that they were then intended for the food of man, and were sold to be used for food while they were unsound and unwholesome. The sub-section appears to me to have been framed to meet the objection raised in *Vinter v. Hind* (10 Q. B. Div. 63). In that case a butcher who sold unsound meat to a customer was held not to be liable to a penalty under the Public Health Act, 1875, on the ground that when the meat was condemned it did not belong to the butcher, and therefore that no penalty had been incurred, because of the terms of sect. 117 of the statute. Field, J. in his judgment, expressed a clear opinion, that if the inspector had seized the meat while in the possession of the respondent for the purpose of sale, the subsequent proceedings would have been in accordance with the provisions of a similar section in the Act of 1875. The defence on which the defendant mainly relied was this—that the unsound walnuts were not, when they were sold, intended for human food. In support of this contention reliance was placed upon the terms of the notice, under which it was properly admitted that the walnuts were sold. Assuming a contract between the defendant and the dealer to have been made in the words of the notice, the question for our determination would seem to be whether the defendant was thereby relieved of the obligation not to sell articles

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liable to be seized under sect. 47. We are asked to answer that question in the affirmative, and for that purpose in effect to add a proviso to the section, that a sale of what was unfit for food should be lawful if the seller stipulated that the buyer should, before a re-sale, separate what was sound from what was unsound. This would be to add to the statute what I have no reason to suppose the Legislature meant to enact, and what would obviously go far to take away the protection to the public which this statute and the Public Health Act, 1875, were intended to afford. It was strenuously contended that the question, whether the defendant had sold the unsound walnuts for the food of man, should be put to the jury. But this was no more than an adroit suggestion that the question of the meaning of the notice should be left to the jury. The terms of the notice are clear. It is not for the jury to say whether any other than their plain and obvious meaning should be attributed to them. And, assuming the notice to be embodied in the contract of sale, I am of opinion that the defendant was not relieved of the duty intended to be imposed upon him as seller by sub-sect. 3 of sect. 47. The enactment does not permit the seller to shift his responsibility to the buyer. I do not see why, if the notice in question should be held to exonerate the seller, a notice to the same effect, set up in the shop or on the barrow of the buyer, should not be equally available to him, as an answer to proceedings for seizure, condemnation, or punishment under the statute. I am of opinion that the conviction was right, and ought to be affirmed.

HAWKINS, J.—Before discussing the questions of law raised on behalf of the defendant, it will be convenient to state shortly the facts as set forth in the case. [His Lordship stated them.] On these facts the counsel for the defendant contended: First, that no offence under sub-sect. 3 of sect. 47 had been shown, because that sub-section only applied where the person in whose possession the articles in question were found had himself committed an offence under sub-sect. 2; secondly, that if the defendant had contracted with Lyons, that Lyons should, in accordance with the notice B., sort out and destroy the unsound fruit from the walnuts sold to him, the defendant would not be guilty of the offence charged, and that the notice was evidence of such a contract; thirdly, that the jury should be asked whether the defendant, when he sold the packages, knowing there were some bad ones among them, intended the bad, or only the good ones for the food of man. The chairman overruled the first and second contentions, and declined to leave the third question to the jury, and he directed the jury to find the defendant guilty, if they found that he sold the walnuts to Lyons, and, that the walnuts were at the time of sale unfit for the use of man, unless he proved that, at the time he sold them, he did not know, and had no reason to believe, that they were unfit for the food of man. He further told the jury that the defendant could not contract himself out of the liability to a penalty under

the Act, by agreeing with Lyons to sort out and destroy the bad nuts, and that they must altogether disregard the notice B. The offence imputed to the defendant being purely the creation of the 47th section of the statute, it is necessary, in the discussion of this case, constantly to bear in mind the (at the first blush not very clear) language of the three first sub-sections of it; the first sub-section pointing out the circumstances justifying the seizure of articles intended for the food of man but unfit for that purpose; the second pointing out how the said articles are to be dealt with, and imposing penalties on those found in possession of them; the third subjecting to penalties the vendor of the unwholesome articles so seized to the person in whose possession they are so found. [The learned judge here read 54 & 55 Vict. c. 76, s. 47, sub-sect. 1 (omitting clause *a.*) and sub-sects. 2 and 3, which clauses are set out *ante*, p. 24, and continued as follows:] It may be conceded that walnuts are articles of food liable to seizure by a sanitary inspector under such circumstances, but under such circumstances only, as are specified in sub-sect. 1. That is to say, if, being intended for the food of man, they are found by such inspector on any premises, sold, or exposed for sale, or deposited in any place for the purpose of sale, or of preparation for sale, and if on inspection and examination they appear to such inspector to be unfit for the food of man. The mere possession of an article of food ordinarily used as human food, which is in an unwholesome condition, is not unlawful, nor is the sale of it for any other purpose than for human food. It may be lawfully dealt with and sold for manure, or for a variety of other purposes not necessary to enumerate. It is the sale or exposure of it with the intention that it shall be used for human food which is an essential element to the rendering the possession of it illegal; and it is immaterial whether the sale be with the intention that the purchaser is himself to be the consumer, or whether it is sold with a view to its resale for human food by the purchaser. The burden of proof that such intention did not exist is, by sect. 47, cast upon the person charged with an offence, and in the absence of such proof the intention to sell for the food of man will be assumed if an article ordinarily so used be found exposed for sale or sold, &c. The non-existence of such a criminal intention is a fact to be established by evidence, and may be proved in a variety of ways: among others, for instance, a *bonâ fide* contract with the purchaser subject to a condition that an article unfit for human food should not be so used, or disposed of to be so used by others, would be evidence to negative such intention. I say a *bonâ fide* contract, because a mere illusory formal contract to that effect, coupled with an underlying intention that the restrictive stipulation need not be observed, would be worthless as a protection to the accused; but the evidence of the contract, together with the question of *bona fides*, ought to be considered by the justices if they have to determine the case, or submitted

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to the jury, if the defendant elects to be tried by jury, for their consideration; and such jury ought to be asked whether they find the criminal intent negatived by the evidence. In this case, I think, having regard to the practice of the trade, as mentioned in paragraph 9 of the case, and the notice B., there was evidence for the jury to consider (see *Symonds v. Pain*, 30 L. J. 256, Ex.; *Sandys v. Small*, 3 Q. B. Div. 449); and if they upon such evidence had come to the conclusion that the defendant *bonâ fide* did not intend the articles to be, and that he sold upon an express condition that they should not be, used for the food of man until the bad walnuts had been separated from the good ones and destroyed, the defendant would have been entitled to an acquittal. Of course, I do not mean to say that the mere fact that the contract of sale was in accordance with notice B. would of itself be conclusive as a defence; for the issue before the jury upon the point now under discussion would be, not whether such a contract was in fact made, but whether the alleged criminal intent had been disproved by it with the other evidence, if any. I only say that the contract was evidence material to the issue, and, in my opinion, the chairman was wrong in refusing to leave the question I have suggested, and which was in substance that which the learned counsel desired should be left, to the jury. I have personally entertained a doubt during the consideration of this case, where articles of food of the same character—*e.g.*, oranges—some portions of which are good and some bad, are mixed together, but the bad are severable from the good, and are not in such proportion to the good as to make the whole unfit for human food, as to how the sanitary inspector and the justices ought to deal with them. It is not necessary, however, to settle that point to-day. I turn now to the offence created by sub-sect. 3. To constitute such an offence it must be shown—first that articles liable to seizure were found in the possession of a person who has purchased of the person accused, for the food of man; secondly, that when so purchased the articles were in such a condition as to be liable to be seized and condemned. Put shortly and in order of time, it amounts to this—that the articles must have been liable to seizure when sold by the accused to his purchaser; that they were bought by such purchaser for the food of man; that they were found in such purchaser's possession; and, when so found, were liable to seizure. Upon the facts stated in the case I fail to see any evidence of these requirements to justify the conviction. First, I think it cannot be truly said that the walnuts were ever according to the ordinary meaning of the term, "found" in the possession of Lyons at all. Secondly, they were voluntarily taken by Lyons to the sanitary inspector at the vestry hall; the inspector simply took them into his possession at Lyons's request. They were not, therefore, in any sense of that word, "seized" by the inspector. Thirdly, they were not when handed by Lyons to the inspector (even if that could be called a finding and seizure)

liable to be seized under sub-sect. 1. They were certainly not then intended for the food of man, for they were handed to the inspector with a view simply to their destruction as unfit for food. They were never whilst in Lyons's possession either sold or exposed for sale, nor deposited in any place for the purpose of sale, or of preparation for sale; and if upon the facts disclosed in the case Lyons had been charged before the magistrate, he could not have been lawfully convicted under sub-sect. 2. That the walnuts were purchased by Lyons with a view to the ultimate sale of such as were good could not be denied, but his intention to sell for human food the bad with the good is inconsistent with his conduct in not offering any for sale, but voluntarily handing them all over for destruction, as though they were trade refuse (see sub-sect. 8 of sect. 47, and sect. 33 of the same Act). The absence of all proof that the walnuts were found or were liable to seizure whilst in Lyons's possession would alone be fatal to the conviction; but even in the defendant's possession, bad as they for the most part were, they were not seizable for condemnation, even in his warehouse or in his shop, nor could he have been convicted, if he could prove that the nuts in their unwholesome condition were not sold or offered for sale, nor intended for the food of man. Proof of the absence of such intention the defendant undoubtedly was entitled to offer to the jury. His counsel endeavoured to do so. The evidence so offered was, in my opinion, very material to that issue, and I think the chairman wrongly rejected it. I am also of opinion that the direction of the chairman to the jury was erroneous. He seems to have forgotten that, to satisfy the requirements of the third sub-section, essential to a conviction, the jury ought to have been asked to find upon the facts enough to establish, not merely the sale by the defendant to Lyons, and that the nuts were then unfit for human food, but that they were liable to seizure under sub-sect. 1, both in the hands of the defendant and of Lyons—that liability involving those most important questions of the intention of the defendant and the object or purpose for which the nuts were sold by the defendant to and purchased by Lyons. I do not agree altogether in the first contention of the defendant's counsel—viz., that the defendant could not be convicted under sub-sect. 3, unless Lyons could be convicted of an offence under sub-sect. 2; but I do agree that Lyons must have been placed in circumstances which would render him liable to a conviction, unless he could establish that the walnuts, had they been seizable when in his possession, were not purchased or intended by him for the food of man. The circumstances as against each must be such as to constitute a *prima facie* case against each, but the guilt of each must depend upon whether the criminal intention existed—i.e., to sell for human food. One might be able to disprove the existence of such intention, the other might not. In such an event one would be guilty, the other would not. So that the innocence of the purchaser,

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because he disproved by evidence the criminal intention, would not protect the vendor, who might not be able to offer such evidence. It is not, however, worth while further to notice the point raised, because no *prima facie* evidence of any offence by Lyons was offered; and the defendant is entitled to an acquittal on other grounds. I should not have felt it necessary to discuss this matter at so much length, and with so much detail, had I not felt its great and grave importance, not only to the defendant, whose reputation as a respectable fruit broker I see no reason to question, but to the whole body of fruit brokers, who would find it difficult to pursue their calling if, having done all in their power to prevent unwholesome fruit being offered for sale for human food, they were in peril of criminal prosecution, involving serious fine or imprisonment, under such circumstances as those before us. I recognise to the fullest extent the policy and propriety of severely dealing with those who wilfully or recklessly expose for sale for human food articles they know to be in an unfit condition for consumption; but every man ought to have the fullest opportunity of establishing his innocence if he can. From a grave oversight on the part of the learned chairman, I think the defendant has been deprived of that opportunity. I think the conviction ought to be quashed, because, on the admitted facts, no offence under sub-sect. 3 could be established, and because, even assuming a *prima facie* case, the chairman refused to put before the jury evidence tendered material for the defence, and misdirected the jury in telling them what would constitute guilt. The conviction must be quashed.

CHARLES and LAWRENCE, JJ. were of opinion that the conviction was bad, for the reasons stated in the judgment of Hawkins, J.; and Wright, J., who was absent when the judgment was delivered, was stated by Hawkins, J. to concur in his judgment.

WILLIAMS and COLLINS, JJ. were also not present when judgment was delivered, but were stated by Hawkins, J. to agree with the decision of the majority of the court that the conviction should be quashed.

BRUCE, J.—I have had an opportunity of reading the judgment of my brother Kennedy, and I agree with the reasons given by him, and am of opinion that this conviction should be quashed.

*Conviction quashed.*

Solicitor for prosecution, *J. Harrison*, clerk to the Bermondsey Vestry.

Solicitors for defendant, *Wilson and Wallis*.

## QUEEN'S BENCH DIVISION.

*Friday, Aug. 3, 1894.*

(Before MATHEW and KENNEDY, JJ.)

LONDON COUNTY COUNCIL (apps.) v. WORLEY (resps.) (a)

*Practice — Summary procedure — Recovery of penalties — Six months' limitation — Continuing offence — Height of buildings — Metropolis Management Act, 1862 (25 & 26 Vict. c. 102), ss. 85 and 107.*

*Sect. 85 of the Metropolis Management Act, 1862 (25 & 26 Vict. c. 102) provides that no building (except a church or chapel) shall be erected on the side of a new street of less width than fifty feet, which shall exceed in height the distance from the external wall or front of such building to the opposite side of such street without consent, &c., nor shall the height of such building be increased so as to exceed such distance, &c., and the section goes on to say, "and every person committing any offence under this enactment shall be liable to a penalty of 5l., and in case of a continuing offence to a further penalty of 40s. for every day during which such offence shall continue after notice."*

*Sect. 107 of the Act provides that no person shall be liable for the payment of any penalty, "unless the complaint respecting such offence has been made before a justice within six months next after the commission or discovery of such offence."*

*The builders of the structure after a conviction against them for an offence under sect. 85 of the statute finished the work, and left the premises; the appellants therefore proceeded for continuing penalties against the respondent, the owner of the structure. The magistrate dismissed the summons now taken out by the appellants against the respondent for continuing penalties.*

*Held, that the respondent was liable for penalties for continuing the offence, as proceedings had been taken by the appellants within six months after the offence complained of had been committed.*

**C**ASE stated by one of the police magistrates of the metropolis.

On the 7th March, 1894, the appellants summoned the respondent for having committed an offence under the 85th section of

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the Metropolis Management Amendment Act, 1862 (25 & 26 Vict. c. 102), by unlawfully erecting a building on the south side of Kensington Court, being a new street of a less width than fifty feet, exceeding in height the distance from the external wall or front of such building to the opposite side of such street, without the consent in writing of the London County Council, and having continued the offence by constructing the building, and by permitting and suffering the building to continue erected above the height without such consent, after notice from the County Council, contrary to 25 & 26 Vict. c. 102, sect. 85, and 51 & 52 Vict. c. 41.

On the hearing it was proved or admitted that the building had been erected for the respondent as owner, and under his directions, and had been carried above the height specified in sect. 85 of 25 & 26 Vict. c. 102, under his directions, and after notice from the appellants to the builders that proceedings would be taken if such height were exceeded, which notice was brought by them to the knowledge of the respondent, and the respondent thereupon communicated with the appellants by letter, and informed them that he was the owner of the building, and that Messrs. Lawrence and Sons were employed by him to erect it, and that they had given up possession of the building on the 8th Feb. 1893, and that the respondent on the date in the summons mentioned was and still continued in possession of the building as owner thereof. It was also admitted that the building still remained above the specified height.

On the 7th Sept. 1893, the present respondent Robert J. Worley, the owner of the building, applied to the appellants, the London County Council, to give their consent *nunc pro tunc* to the erection of the building beyond the height specified in the statute, and on the 16th Oct. 1893, the appellants refused to give such consent, and gave notice thereof to the respondent.

It was also proved or admitted that a penal notice had been served on the respondent by the appellants on the 23rd Dec. 1893, requiring him to comply with the requirements of the law in respect of the building subject to the penalty and continuing penalties provided in the statute 25 & 26 Vict. c. 102, sect. 85; and that a similar notice had been served on the builders, Messrs. Lawrence and Sons, on the 7th Oct. 1892, which had been brought immediately to the notice of the respondent.

It was contended on behalf of the respondent that he was not liable to any penalty for the continuing offence, and that he was not liable to the penalty for the original offence because proceedings had not been taken against him within six months of the commission or discovery of such offence, and in support of this contention sect. 107 of 25 & 26 Vict. c. 102, and sect. 11 of 11 & 12 Vict. c. 43, were referred to.

It was contended on behalf of the appellant that the limitation of time within which proceedings could be taken did not apply in the case of a continuing offence, that the respondent had in fact



committed the original offence, and that he was liable to the continuing penalties for continuing the offence after the penal notice served on him on the 23rd Dec. 1893.

The magistrate held that sect. 107 of 25 & 26 Vict. c. 102, and sect. 11 of 11 & 12 Vict. c. 43, applied, and that the summons was out of time.

The question for the opinion of the court was, whether the determination of the magistrate was right in point of law.

Sect. 85 of the Metropolis Management Amendment Act, 1862 (25 & 26 Vict. c. 102), provides that :

No building except a church or chapel shall be erected on the side of any new street of a less width than fifty feet, which shall exceed in height the distance from the external wall or front of such building to the opposite side of such street, without the consent in writing of the Metropolitan Board of Works (now by 51 & 52 Vict. c. 41, the London County Council); nor shall the height of any building so erected be at any time subsequently increased so as to exceed such distance without such consent; and in determining the height of such building the measurement shall be taken from the level of the centre of the street immediately opposite the building up to the parapet or eaves of such building; and every person committing any offence under this enactment shall be liable to a penalty of 5*l.*, and in case of a continuing offence to a further penalty of 40*s.* for every day during which such offence shall continue after notice from the said board (now county council), to be recovered by summary proceedings.

Sect. 107 provides that :

No person shall be liable for the payment of any penalty or forfeiture under the recited Acts, or this Act, or any bye-law made by virtue thereof, for any offence made cognisable before a justice unless the complaint respecting such offence has been made before such justice within six months next after the commission or discovery of such offence.

Sect. 11 of the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), provides that :

In all cases where no time is already or shall hereafter be specially limited for making any such complaint or laying any such information in the Act or Acts of Parliament relating to each particular case, such complaint shall be made and such information shall be laid within six calendar months from the time when the matter of such complaint or information respectively arose.

*Poland*, Q.C. and *Avory* for the appellants.—The appellants were entitled to serve upon the respondent a notice in conformity with the statute that he would be liable for continuing penalties unless the building in question is erected in conformity with the statute, and not having complied with this provision of the statute, is liable for these penalties, although a conviction was obtained against the builders of the building, and not against the respondent the owner. Complaint had been made before a magistrate within six months after the commission of the offence, in compliance with sect. 107 of the statute; the continuing offence by the owner runs from the time the respondent had notice from the appellants. They cited *London County Council v. Lawrence* [69 L. T. Rep. 344; (1893) 2 Q. B. 228], which was a decision upon a summons against the builders of the structure in question: *Wallen v. Lister*, 70 L. T. Rep. 348; (1894) 1 Q. B. 312; *Rumball* (app.) *v. Schmidt* (resp.), 46 L. T. Rep. 661; 8 Q. B. Div. 603; *Metropolitan Board of Works v.*

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*Anthony*, 54 L. J. 39, M. C.; *Reg. v. Catholic Life and Fire Assurance and Annuity Institution Limited*, 48 L. T. Rep. 675; *Higgins* (app.) v. *Guardians of the Poor of the Norwich Union* (resps.), 22 L. T. Rep. 752.]

*Dickens*, Q.C. and *C. F. Lloyd*.—The respondent is not liable for a continuing offence; he has not been convicted of the original offence, and therefore it cannot be said that proceedings have been taken against him within six months of the commission or discovery of the offence according to sect. 107 of the statute. If the statute does not create the limitation, the appellants might come down year after year upon a *bonâ fide* purchaser, and serve him with notice of a continuing offence. Proceedings should have been instituted within six months of the commission or discovery of the offence, and when once the appellants have proceeded against and obtained a conviction against the owner of the building for his original offence, the owner becomes liable to pay continuing penalties if he does not comply with the terms of the statute. The respondent never has been convicted of the original offence, and therefore cannot be proceeded against for penalties for a continuing offence. That these proceedings should have been instituted against the respondent within six months of the commission of the offence seems to be more clearly shown by sect. 11 of 11 & 12 Vict. c. 43 (*Jervis' Act*), which is a similar section to sect. 107 of the present Act, and which provides that where no time is mentioned for making a complaint such complaint shall be made, and the section goes on to say, "and the information shall be laid within six months from the time when the matter arose; here there was no information laid against the respondent within that time.

*Poland*, Q.C. in reply.

*MATHEW*, J.—I have very little doubt that the respondent is liable to pay continuing penalties. The offence with which he is charged is for continuing to keep erected a building which has been erected contrary to sect. 85 of the *Metropolis Management Act*, 1862 (25 & 26 Vict. c. 102.) That section after stating what shall be the limit to the height of certain buildings, unless the consent of the appellants be obtained, goes on to say that "every person committing any offence under this enactment shall be liable to a penalty of 5*l.*, and in case of a continuing offence, be liable to a further penalty of 40*s.* for every day during which such offence shall continue after notice" from the appellants. There are, therefore, two offences contemplated by what I have just read, a committing the offence, and continuing to commit the offence, and sect. 107 of the Act then says that no person shall be liable for penalties under the Act, or for any offence cognisable before a justice, "unless the complaint respecting such offence has been made before a justice within six months next after the commission or discovery of such offence." This only means that the local authority shall not proceed for a penalty for an offence which shall not have been

committed within six months of the date of the summons. This is the only limitation put upon the local authorities. If some limitation was not put, all that the builder, or the owner, or whoever might be proceeded against, would have to do (according to what has been contended on behalf of the respondent) would be to sell the building to someone else, and to get out of the Act altogether. The Act itself does not prevent this being done, but the Legislature contemplated the appellants doing their duty promptly. In this case the complaint has been made within six months after the commission or discovery of the offence, and the respondent is now continuing to commit that offence by keeping up the structure in question. I am therefore of opinion that the magistrate was wrong in dismissing this summons, and the case therefore must be remitted to him to be dealt with.

KENNEDY, J. concurred.

*Case remitted to the magistrate.*

Solicitor for the appellants, *Blaxland*.

Solicitors for the respondent, *Poole and Robinson*.

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## QUEEN'S BENCH DIVISION.

*Monday, Aug. 3, 1894.*

(Before MATTHEW and KENNEDY, JJ.)

HUFFAM (app.) v. NORTH STAFFORDSHIRE RAILWAY COMPANY  
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*Bye-laws — Imposition of penalties — Invalidity of bye-law—  
Passenger travelling with a ticket on the day on which ticket  
was not available—Offence created where no intention to defraud  
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Act, 1845 (8 & 9 Vict. c. 20), ss. 103, 104, 108, and 109—  
Regulation of Railways Act, 1889 (52 & 53 Vict. c. 57), s. 5 (3).*

*The bye-law of a railway company provided that, "any passenger  
using, or attempting to use, a ticket on any day for which such  
ticket is not available, or using a ticket which has been already  
used on a previous journey, is hereby subjected to a penalty not  
exceeding forty shillings."*

(a) Reported by T. R. BRIDGWATER, Esq., Barrister-at-Law.

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104, 108, 109;  
52 & 58 Vict.  
c. 57, s. 5 (3).

*No fraud, or attempt to commit fraud, was alleged or suggested against the appellant. The justices convicted the appellant under the above bye-law.*

*Held, that the above bye-law, being repugnant to sect. 5 of the Regulation of Railways Act, 1886, was an invalid one, and the conviction therefore was bad.*

CASE stated by justices.

At a Court of summary jurisdiction held at Hanley, the appellant was charged, on an information preferred by the North Staffordshire Railway Company (hereinafter called the respondents), for that he, on the 15th day of March, 1894, at Stoke-upon-Trent, did unlawfully use a certain railway ticket on a day for which such ticket was not available, contrary to the bye-laws of the said company made in pursuance of the provisions of the statute in such case made and provided.

The bye-law relied upon was in the following words :

Any passenger using or attempting to use a ticket on any day for which such ticket is not available, or using a ticket which has been already used on a previous journey, is hereby subjected to a penalty not exceeding forty shillings.

The appellant travelled on the respondents' railway by the train which departed at 5.30 p.m. on Thursday, the 15th day of March, 1894, from Stoke-upon-Trent to Macclesfield.

The tickets of the passengers by that train were examined at Congleton, an intermediate station between Stoke-upon-Trent and Macclesfield, and the appellant there tendered the return half of a first-class return ticket, which bore the date of the 28th day of Feb., 1894, as the date of issue, and which was proved and admitted to have been purchased by him on the 28th day of Feb., 1894.

The following is a copy of the ticket tendered by the appellant, and of the conditions indorsed :

Issued by the N.S.R. Co., subject to the company's regulations, and to the conditions in their time tables, not transferable, first-class, available on the day of issue for one journey only ; Stoke-upon-Trent to Macclesfield. H.R. Via main line. Fare, 5s. 9d.

The number of the ticket was upon it. Half of the ticket was produced. There was nothing on the back of it except the date of issue.

One of the regulations and conditions contained in the respondents' time tables at the date of the issue of the said ticket was as follows :

Return tickets between North Staffordshire Railway stations are available for the day of issue only except those issued on Saturday or Sunday, which are available up to Monday evening following. Return tickets issued between North Staffordshire stations and Derby, Burton, Crewe, Stafford, or Market Drayton, are available for seven days.

The full first-class fare from Stoke-upon-Trent to Macclesfield was demanded from the appellant by the respondents' ticket

examiner, at Congleton, but the amount was not specified. The appellant refused to pay such fare, but gave his correct name and address.

It was admitted that the appellant had a first-class annual contract ticket by which he was entitled to travel between Macclesfield and Manchester, on the line of the London and North-Western Railway Company, on the 15th day of March, 1894.

The justices were of opinion that the bye-law applied, and was not *ultra vires*, and convicted the appellant.

The Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20.)

Sect. 103 enacts that :

[If any person travel or attempt to travel in any carriage of the company, or of any other company, or party using the railway, without having previously paid his fare, and with intent to avoid payment thereof, or if any person having paid his fare for a certain distance, knowingly and wilfully proceed in any such carriage beyond such distance, without previously paying the additional fare for the additional distance, and with intent to avoid payment thereof, or] if any person knowingly and wilfully refuse or neglect on arriving at the point to which he paid his fare to quit such carriage every such person shall for every such offence forfeit to the company a sum not exceeding forty shillings.

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c. 57, s. 5 (3).

The portion of the above section between brackets is repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

Sect. 104 enacts that :

If any person be discovered either in or after committing or attempting to commit any such offence as in the preceding enactment mentioned, all officers and servants, and other persons on behalf of the company, or such other company or party as aforesaid, and all constables, gaolers, and peace officers, may lawfully apprehend and detain such person until he can conveniently be taken before some justice, or until he be otherwise discharged by due course of law.

Sect. 108 gives power to the railway company to make regulations for the travelling upon and the using and working of the railway.

Sect. 109 gives power to make regulations by bye-laws, and to repeal or alter such bye-laws, and make others :

Provided that such bye-laws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect, or to the provisions of this or the special Act, &c.

Sub-sect. 3 of sect. 5 of the Act to amend the Regulation of Railways Act, 1889 (52 & 53 Vict. c. 57) enacts that :

If any person travels or attempts to travel on a railway without having previously paid his fare, and with intent to avoid payment thereof, &c., on summary conviction, he shall be liable to a fine not exceeding forty shillings, and in the case of a second or subsequent offence to a fine not exceeding twenty pounds, &c.

*A. T. Lawrence* for the appellant.—This conviction ought to be quashed. The bye-law is *ultra vires*. No fraud is alleged, and no fraud can be said to have been committed. Railway companies under sect. 109 of the Railways Clauses Consolidation



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Act, 1845, have power to make bye-laws, but they have no power to impose penalties under their bye-laws except where fraud has been committed, or attempted to be committed. He cited *Dyson v. London and North-Western Railway Company* (44 L. T. Rep. 609; 50 L. J. 78, M. C.; 7 Q. B. Div. 32); *London, Brighton, and South Coast Railway Company v. Watson* (40 L. T. Rep. 183; 4 C. P. Div. 118; 48 L. J. 316, C. P.)

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c. 57, s. 5 (3).

*W. F. Craies* for the respondent company.—The bye-law in this case is different to the bye-law in *Dyson v. London and North-Western Railway Company* (44 L. T. Rep. 609; 50 L. J. 78, M. C. 7 Q. B. Div. 32). The Statute Law Revision Act of 1892 (55 & 56 Vict. c. 19) has repealed the first part of sect. 103 of the Railways Clauses Consolidation Act, 1845; it got rid of what was obviously a hardship, making passengers pay for a ticket from where the train started. This case is not like a case where the passenger is travelling without a ticket, or has bought one from another person. This bye-law is quite distinct from such bye-laws. This is merely a civil penalty recoverable before justices. The passenger has three alternatives—to pay the fare, to produce the proper ticket, or to give his name and address. He cited *Saunders (app.) v. South-Eastern Railway Company (resp.)* (43 L. T. Rep. 281; 5 Q. B. Div. 456; 49 L. J. 761, Q. B.)

MATHEW, J.—I am of opinion that this conviction by the justices ought to be quashed, the penalty ought not to have been inflicted. It is agreed that the traveller, the appellant in this case, was innocent of any fraudulent intent. Having regard to sect. 103 and 104 of the Railway Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), the bye-law of the respondent company is bad under those sections. For fraud is the gist of the offence under those sections, and here there was no fraud. The bye-law is also bad according to the decision in the case of *Dyson v. The London and North-Western Railway Company* (44 L. T. Rep. 609; 50 L. J. 78, M. C.; 7 Q. B. Div. 32), and no reasons have been given to show that that case was wrongly decided. But it is argued on behalf of the respondent company that the bye-law, though it may be void under the sections cited, has nevertheless been made valid by the repeal of sect. 103 of the Railway Clauses Consolidation Act, 1845, by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19). But before the Statute Law Revision Act of 1892, there came the Regulation of Railways Act, 1889, in sect. 5, sub-sect. 3, of which Act there is an elaborate code dealing with this description of offence, and it is there enacted that, "if any person travels on a railway without having previously paid his fare, and with intent to avoid payment," he shall be liable to a penalty, using, therefore, the same words, "with intent to avoid payment," as were used in the repealed section 103 of the Railways Clauses Consolidation Act, 1845. If the appellant could have been brought within the terms of that section he might have been rightly convicted; but the appellant had previously

paid his fare, and there was also no intention to defraud, therefore he could not have been convicted. The conviction by the justices was therefore wrong, and must be quashed.

KENNEDY, J.—I am of the same opinion.

*Conviction quashed.*

Solicitors for the appellant, *Parkis and Co. ; Sword, Hanley.*

Solicitors for the respondent company, *Chester, Mayhew, Broome, and Griffiths, for E. A. Paine, Hanley.*

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c. 20, ss. 103,  
104, 108, 109;  
52 & 53 Vict.  
c. 57, s. 5 (3).*

## QUEEN'S BENCH DIVISION.

*Oct. 27 and 29, 1894.*

(Before MATHEW and CHARLES, JJ.)

TAYLOR v. THE QUEEN. (a)

*False pretences—Receiving goods obtained by—Practice—Form of indictment.*

*Two prisoners, Farrell and Taylor, were charged in an indictment which contained four counts, of which the first and second counts charged Farrell with obtaining goods by false pretences, the alleged false pretences being set out in the usual form. The third and fourth counts charged that Taylor unlawfully received the goods, unlawfully, knowingly, and designedly obtained by false pretences. The false pretences by which it was alleged that Farrell obtained the goods were not set out in the third and fourth counts.*

*Upon a writ of error it was contended on behalf of Taylor that the indictment was insufficient, as it did not state in the third and fourth counts what the false pretences were by means of which it was alleged that the goods had been obtained.*

*Held, that the indictment was good and sufficiently set forth the charge against Taylor.*

**T**HIS was a writ of error in respect of a judgment of the Recorder of Portsmouth upon an indictment for obtaining goods by false pretences and for receiving the goods so obtained.

(a) Reported by W. H. HORSFALL, Esq., Barrister-at-Law.



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The indictment charged : in the first count,

That Augustus Farrell, on the 29th day of Nov., 1893, unlawfully, knowingly, and designedly, did falsely pretend to Joshua Clarke, that he, the said Augustus Farrell, then was a servant of one George Farrell, of East-street, Portsea (the said George Farrell then and long before being well known to the said Joshua Clarke, and a customer of George Walter Peel, his master, in his business and way of trade as a butcher), and that the said Augustus Farrell was then sent by the said George Farrell to the said Joshua Clarke for two hundredweight of beef, twelve pounds of beef suet, two legs of mutton, two shoulders of mutton, and two bull kidneys, by means of which said false pretences the said Augustus Farrell did then unlawfully obtain from the said Joshua Clarke two hundred and twenty-seven pounds of beef, twelve pounds of beef suet, forty-one pounds of mutton, and two and a quarter pounds of ox kidneys, the property of the said George Walter Peel, with intent to defraud ; whereas in truth and in fact the said Augustus Farrell was not then the servant of the said George Farrell and the said Augustus Farrell was not then sent by the said George Farrell to the said Joshua Clarke for the said beef, suet, mutton, or kidneys, or for any beef, suet, mutton, or kidneys whatsoever, as he the said Augustus Farrell well knew at the time when he did so falsely pretend as aforesaid against the form of the statute, &c.

The second count was similar to the first count, but alleged that the false pretences were made to George Walter Peel.

The third count charged,

That George Taylor afterwards, on the said 29th day of Nov., 1893, two hundred and twenty-seven pounds of beef, twelve pounds of suet, forty-one pounds of mutton, and two and a quarter pounds of ox kidneys, of the goods and chattels of the said George Walter Peel, then lately before unlawfully, knowingly, and designedly obtained from the said Joshua Clarke by false pretences unlawfully did receive and have, he the said George Taylor, at the time when he so received the said beef, mutton, suet, and kidneys as aforesaid, then well knowing the same to have been unlawfully, knowingly, and designedly obtained from the said Joshua Clarke by false pretences against the form of the statute, &c.

The fourth count was similar to the third count, but alleged that the goods had been obtained from George Walter Peel.

To this indictment Augustus Farrell pleaded not guilty, and George Taylor demurred on the ground that it did not sufficiently state the charge against him. The Recorder overruled the demurrer, and directed that a plea of not guilty should be entered on behalf of Taylor. The prisoners were then tried, convicted, and sentenced upon the indictment.

The record having been formally made up, the defendant, George Taylor, assigned as error :

1. That in the third and fourth counts of the indictment against the said George Taylor the false pretences are not set out by means of which it is alleged that the articles of food therein mentioned were unlawfully obtained.

2. That the false pretences by means of which it is in the said third and fourth counts alleged that the said articles of food were unlawfully obtained are not in the said counts stated to be those by means of which Augustus Farrell is in the first and second counts of the said indictment alleged to have obtained the said articles of food.

3. That the indictment and proceedings aforesaid and matters therein contained are not sufficient in law to warrant the said judgment so given against the said George Taylor, or to convict him of the misdemeanors aforesaid, or any or either of them.

The 24 & 25 Vict. c. 96 provides :

Sect. 95. Whosoever shall receive any chattel, money, valuable security, or other property whatsoever, the stealing, taking, obtaining, converting, or disposing whereof is made a misdemeanor by this Act, knowing the same to have been unlawfully stolen, taken, obtained, converted, or disposed of, shall be guilty of a misdemeanor, and may be indicted and convicted thereof, whether the person guilty of the principal misdemeanor shall or shall not have been previously convicted thereof, or shall or shall not be amenable to justice.

*C. W. Matthews and Stephenson* for the prisoner.—It is submitted that this indictment was bad, because it did not set out in the third and fourth counts the false pretences by which the goods had been obtained. There is nothing to connect the third and fourth counts with the first and second counts. There must be something to identify the false pretences in the third and fourth counts with those alleged in the first and second counts. It has been held that the false pretences must be set out in counts against a receiver: (*R. v. Hill*, Russell on Crimes, 4th edit., p. 554.) That view was also taken in *Reg. v. Goldsmith* (12 Cox C. C. 479; L. Rep. 2 C. C. R. 74.)

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*Temple Cooke and Warry* for the Crown.—The indictment follows the words of the statute. The gist of the offence is the guilty knowledge that the goods had been obtained by fraud. The only point decided in *Reg. v. Goldsmith* (*ubi sup.*) was that if there was any defect in the indictment it was cured by the verdict. The point now raised was not fully argued in *Reg. v. Hill* (*ubi sup.*) *R. v. Wilson* (2 Moody C. C. 52) decides that it must be alleged that the goods were obtained by false pretences, and that it is not sufficient to say that they have been unlawfully obtained. It has also been decided that in an indictment for conspiracy to obtain money by false pretences it is not necessary to set out the false pretences: (*R. v. Gill*, 2 B. & Ald. 204.)

*Stephenson* in reply.—The gist of the offence is not the receiving, but the fact that the goods had been obtained by false pretences, therefore the false pretences must be set out.

MATHEW, J.—I am of opinion that our judgment must be for the Crown. The indictment is for receiving goods knowing them to have been obtained by false pretences, and it follows the exact words of the statute. The indictment was demurred to upon the ground that the particular false pretences should have been set out in the receiving counts. The demurrer was overruled, and from that decision the present proceedings have been brought. It is clear that this form of indictment was adopted soon after the statute was passed, and has been in use for many years. The gist of the offence is clearly set out, namely, that the prisoner unlawfully received the goods with the knowledge that they had been obtained by false pretences. Our attention has been called to the dicta of several judges upon this question. In 1851 Mr. Greaves, Q.C., who was sitting as a Commissioner at the Gloucester Assizes, called the attention of Patteson and Talfourd, JJ. to a case *R. v. Hill* (Russell on Crimes, 4th edit. p. 554), in which a person was indicted for receiving goods which he knew had been obtained by false pretences, which false pretences were not set out in the indictment. The judges expressed the opinion that the count was bad, and that the false pretences should have been set out, but it does not appear that the point was argued before them. Another dictum is that of Bramwell, B. in *Reg. v. Goldsmith* (12 Cox C. C. 479; L. Rep. 2 C. C. R. 74), but that is of a most guarded character. That case went to trial and a conviction

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followed, and it was held that, if there had been any defect in the indictment, it was cured by the conviction. Bramwell, B. said that, if the objection had been taken on demurrer or motion to quash, he was not prepared to say that the count would have been good. We have to decide if it is necessary to set out the false pretences in this case where the gist of the offence was unlawfully receiving the goods with guilty knowledge of the false pretences by which they had been obtained. In *Rea v. Gill* (2 B. & Ald. 204) the charge was one of conspiracy to obtain large sums of money by means of false pretences, and the false pretences were not set out. Abbott, C.J. said: "The indictment appears to me sufficient. The gist of the offence is the conspiracy, and, although the nature of every offence must be laid with reasonable certainty, so as to apprise the defendant of the charge, yet I think it is sufficiently done by the present indictment." Bayley and Holroyd, JJ. delivered judgments to the same effect. It seems to me to be clear that it was not necessary to set out the false pretences.

MR CHARLES, J.—I agree with the judgment that has been delivered by Mathew, J. It seems to me that the third and fourth counts are both good, as they state with reasonable certainty the charge against the prisoner. The gist of the offence was receiving the goods unlawfully obtained by means of false pretences, well knowing that they had been so obtained. It is necessary to allege in the indictment all that must be proved in order that a conviction may be obtained, and in this indictment it is alleged that the goods were obtained by means of false pretences, and that the receiver knew that they had been so obtained. The case of *R. v. Wilson* (2 Moo. C. C. 52) is clearly distinguishable, for the indictment there did not allege that the goods had been obtained by false pretences, but only that they had been unlawfully obtained. I agree with the remarks made by Mathew, J. with reference to the case of *R. v. Hill* (Russell on Crimes, 4th edit., p. 554). In *Reg. v. Goldsmith* (12 Cox C. C. 479; L. Rep. 2 C. C. R. 74) the whole of the argument turned upon the question whether the alleged defect in the indictment was cured by the verdict. The defect was assumed for the purposes of the argument only, and there seems to me to be nothing in these cases which is binding on us or necessitates our holding that this indictment is bad. It conveys upon the face of it the allegation of all the ingredients of the offence charged.

*Judgment for the Crown.*

Solicitor for the prisoner, *A. W. Mills*, for *King*, Landport.  
Solicitors for the Crown, *Ford and Ford*.

## QUEEN'S BENCH DIVISION.

*Tuesday, Oct. 30, 1894.*

(Before MATHEW and CHARLES, JJ.)

REG. v. KERSWILL AND ANOTHER. (a)

*Justices—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 6—Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89), ss. 66, 73—Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20)—Bye-laws—Nonpayment of cab fare—Penalty—Order for payment—Form of order.*

*The penalty imposed by the Town Police Clauses Act, 1847, and bye-laws made thereunder, for the nonpayment of a cab fare, is "a sum of money claimed to be due and is recoverable on complaint to a court of summary jurisdiction, and is to be deemed a civil debt" within the meaning of the Summary Jurisdiction Act, 1879.*

*Therefore justices have no jurisdiction to make an order directing that a person who has not paid a cab fare should be imprisoned in default of the payment of the fare.*

THIS was an order *nisi* calling upon certain justices of the peace for the borough of Torquay and William Bagwell to show cause why a writ of *certiorari* should not issue to remove into this Court a certain record of conviction made on the 18th day of June, 1894, whereby James Augustine de Castro was convicted for that he, on the 14th day of June, 1894, did unlawfully refuse to pay on demand to the said William Bagwell, then being the driver of a hackney carriage, the fare of four shillings allowed by the bye-laws of the Torquay Town Council, and why the said conviction when returned should not be quashed, on the ground that the proceedings being for the recovery of a civil debt, the justices had no jurisdiction to make an order not in accordance with sects. 6 and 35 of the Summary Jurisdiction Act, 1879.

*Sington, for the justices, showed cause.—It is submitted that the order of the justices was right in form. The bye-laws and the Town Police Clauses Act, 1847, under which they are made, refer to the fare to be recovered as a penalty, and the Railways Clauses Consolidation Act, 1845, which is incorporated with the former Act, provides that in default of payment and sufficient distress imprisonment may be ordered. The Summary Jurisdiction Act, 1879, by sect. 5, limits the terms of imprisonment*

(a) Reported by W. H. HORSFALL, Esq., Barrister-at-Law.

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that may be imposed. The case is not within sect. 6, as there is no sum of money claimed to be due on complaint. [MATHEW, J.—The penalty is the amount of the fare.] It might be as much as 5*l.* under the bye-laws. This sum is not recoverable as a civil debt: (*Reg. v. Paget*, 45 L. T. Rep. 794; 8 Q. B. Div. 151.) The disobedience to a statutory enactment or bye-laws made thereunder is a criminal offence: (*Mellor v. Denham*, 40 L. T. Rep. 395; 5 Q. B. Div. 467; *Reg. v. Whitchurch*, 45 L. T. Rep. 379; 7 Q. B. Div. 584.)

*A. B. Shaw*, in support of the rule.—The only point is whether this case comes within the provisions of sect. 6 of the Summary Jurisdiction Act, 1879. It is true that there was an information in this case, but it was not necessary that there should be one, and it was not the description of information meant in that section. This was only a civil debt, and cannot by proceedings like these be converted into an offence: (*Reg. v. Martin*, 19 L. T. Rep. 733; *sub nom. Reg. v. Master*, L. Rep. 4 Q. B. 235.)

*Sington*, in reply, referred to *Reg. v. Justices of Tynemouth*, 54 L. T. Rep. 386; 16 Q. B. Div. 647.)

MATHEW, J.—I am of opinion that this rule must be made absolute. The original object with which these proceedings was instituted has no doubt been obtained, for the money claimed has been paid; but I am clear that the order as drawn up should be quashed. The defendant was charged with not having paid a cab fare, and upon receiving a summons to appear before the justices to answer the charge he sent the amount demanded to the clerk. But the justices proceeded, nevertheless, to hear the charge, and, there being no defence, they ordered him to pay the amount claimed and the costs; and the order went on to direct that the defendant should be imprisoned in default of payment. It is against the order made in that form that the defendant protests. The statutes relating to the question are very confusing, and it is difficult to ascertain what the Legislature intended to enact. The Town Police Clauses Act (10 & 11 Vict. c. 89) provides by sect. 56 that if any person refuse to pay on demand, to any proprietor or driver of any hackney carriage, the fare allowed by this or the special Act, or any bye-law made thereunder, such fare may, together with costs, be recovered before one justice as a penalty. That seems to me clearly to be a provision for the recovery of a civil debt, for the section provides that the person may apply to the justice for the recovery of nothing beyond the amount of the fare except the costs. It has been argued that because the word penalty is used that that makes it a criminal matter; but I do not think that that alters the character of the obligation. The Railway Clauses Consolidation Act, 1845, is incorporated with this Act for the purpose of providing the procedure by which a penalty may be recovered, and that Act treats a penalty in the strict sense of the word, though the expression there used is “on complaint,” and not “on information.” But since then the Summary Jurisdiction



Act, 1879, has been passed, and sect. 5 of that Act provides that in cases of conviction and of non-payment of the money adjudged to be paid, and in default of the distress the person may be imprisoned for certain fixed periods therein mentioned. I think that section does not apply to a case in which justices make an order on the nonpayment of a cab fare. But the next section (sect. 6) seems to me to be clearly applicable to the debt in question, for it provides that where under any Act, whether past or future, a sum of money claimed to be due is recoverable on complaint to a court of summary jurisdiction, and not on information, such sum shall be deemed to be a civil debt, and if recovered before a court of summary jurisdiction shall be recovered in the manner in which a sum declared by this Act to be a civil debt recoverable summarily is recoverable under this Act, and not otherwise. It is extremely difficult to say why the words "and not on information" were inserted in that section; but I think that the draftsman intended to exclude those cases in which a sworn information is required by statute. I am of opinion, therefore, that our judgment must be that the order as drawn up must be quashed. I think that the provisions of the Summary Jurisdiction Act, 1884, do not apply to the present case. That Act applies only to procedure under the Acts mentioned in the schedule thereto, and not to cases contemplated under sect. 6 of the Summary Jurisdiction Act, 1879.

CHARLES, J.—I am of the same opinion. The money which it was sought to recover was clearly a civil debt, and although the Town Police Clauses Act, 1847, says that it may be recoverable as a penalty that does not alter the character of it. The mode given for enforcing a debt does not make the nonpayment of it an offence: (*Reg. v. Master*, 19 L. T. Rep. 233; L. Rep. 4 Q. B. 285.) In order to find out how this money was recoverable it is necessary to turn to the Railways Clauses Consolidation Act, 1845, which provides that it may be recovered on complaint before two justices, and that if the amount be not paid a distress may be levied, and in default of distress the person not paying may be imprisoned. But by the Summary Jurisdiction Act, 1879, this is again altered, for by sect. 5 the period of imprisonment on conviction is limited, and by sect. 6 the sum recoverable is to be recovered as a civil debt. I am of opinion that this sum comes within the terms of sect. 6. The words "not on information" in that section present a difficulty, for in this case there was an information. But on reflection, I do not think that those words apply to this case, although it is difficult to put a correct meaning upon them. It seems to me that those words were inserted to emphasise the fact that sect. 6 does not apply to criminal matters. Another difficulty is said to be created by the Summary Jurisdiction Act, 1884, but that is cleared away when we find that that Act repealed so much of the Railways Clauses Consolidation Act, 1845, as provided for the levying of a distress and imprisonment,

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and only leaves in force the early part of sect. 145 of that Act. I also think that sect. 5 of the Summary Jurisdiction Act, 1879, does not apply to the present case. I agree therefore that this rule must be made absolute.

*Rule absolute.*

Solicitors for the justices, *Brownlow and Howe*, for *Lindop*,  
Torquay.

Solicitors for the applicant, *Rye and Eyre*.

## QUEEN'S BENCH DIVISION.

*Friday, Nov. 2, 1894.*

(Before MATHEW and CHARLES, JJ.)

SCOTT (app.) v. BOULD (resp.) (a)

*Mine—Coal mines—Daily inspection of guides and conductors—  
Report—Entry in book—Coal Mines Regulation Act, 1887  
(50 & 51 Vict. c. 58), s. 49, r. 5.*

*It is provided by the Coal Mines Regulation Act, 1887, s. 49, r. 5,  
that a competent person, or competent persons, appointed by the  
owner, agent, or manager for the purpose, shall, once at least  
in every twenty-four hours, examine the state of the external  
parts of the machinery, the state of the guides and conductors  
in the shafts, and the state of the heudgear, ropes, chains, and  
other similar appliances of the mine which are in actual use  
both above ground and below ground, and shall once at least in  
every week examine the state of the shafts by which persons  
ascend or descend; and shall make a true report of the result  
of such examination, and every such report shall be recorded  
without delay in a book to be kept at the mine for the purpose,  
and shall be signed by the person who made the inspection.*

*Held, that the result of the daily examination of the guides and  
conductors must be entered in the book, as well as the result of  
the weekly examination of the shafts.*

THIS was a case stated by the stipendiary magistrate for the  
Wolverhampton and South Staffordshire District for the  
purpose of obtaining the opinion of the High Court on questions  
of law which arose before him.

(a) Reported by W. H. HORSFALL, Esq., Barrister-at-Law.



At a petty sessional court holden at Wolverhampton on the 4th day of July, 1894, an information was preferred by the said William Beattie Scott (hereinafter called the appellant) against the said Joseph Bould (hereinafter called the respondent) under the Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58), s. 49, General Rule 5, charging that the respondent on the 18th day of June, 1894, then being the owner of a certain colliery called or known by the name of the Moseley Hole Colliery, situate at Moseley Hole, near Wolverhampton, in the county of Stafford, the same being a coal mine, or colliery, within the true intent and meaning of 50 & 51 Vict. c. 58, the competent person appointed for that purpose did not record without delay, in the book kept at the said mine for that purpose, the result of his examination of the state of the guides and conductors in the shafts of the said mine.

The facts, as stated in the information, were proved or admitted.

The Coal Mines Regulations Act, 1887 (50 & 51 Vict. c. 58), enacts :

Sect. 49. The following general rules shall be observed, so far as is reasonably practicable, in every mine :

Rule 5. A competent person, or competent persons, appointed by the owner, agent, or manager for the purpose, shall, once at least in every twenty-four hours, examine the state of the external parts of the machinery, the state of the guides and conductors in the shafts, and the state of the headgear, ropes, chains, and other similar appliances of the mine which are in actual use both above ground and below ground, and shall once at least in every week examine the state of the shafts by which persons ascend or descend ; and shall make a true report of the result of such examination, and every such report shall be recorded without delay in a book to be kept at the mine for the purpose, and shall be signed by the person who made the inspection.

Upon the hearing and at the close of the appellant's case the respondent's solicitor contended that the information disclosed no offence under the rule, because the rule does not require any report whatever of the result of the examination referred to in the earlier part of the rule, which is to be made once at least in every twenty-four hours of "the external parts of the machinery, and the state of the guides and conductors, &c.," and that the rule only directs that the result of the weekly examination of the state of the shafts by which persons ascend or descend shall be recorded in the book kept for that purpose. That, in fact, no report or entry in the book was necessary on the examination which the rule directs in the earlier portion to be made once at least in every twenty-four hours.

The magistrate upheld the contention of the respondent's solicitor.

*H. Sutton* for the appellant.—It is submitted that the decision of the magistrate was wrong. The latter part of the rule should be read as applying to both the daily and the weekly examination. The words "such examination" in the latter part of the rule refer to each examination equally, and not to weekly examination of the shafts only. The object of the rule is to ensure that the examination takes place, and that the whole of

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the machinery, &c., of the mine is kept in a proper state of efficiency.

No one appeared for the respondent.

MATHEW, J.—This case must be remitted back to the stipendiary magistrate with the expression of our opinion that the result of the daily examination of the state of the external parts of the machinery, the state of the guides and conductors, &c., must be entered without delay in the book. I think that the correct way to read the rule is that suggested in the course of the argument, namely, that the words “and shall once, at least, in every week examine the state of the shafts by which persons ascend or descend” must be treated as if they were a parenthesis. The last paragraph in the rules applies to the first part of the rule as well as to the words I have just read. The words “such examination” apply to both the daily and the weekly examination. This appeal must, therefore, be allowed.

CHARLES, J.—I agree.

*Appeal allowed.*

Solicitor for the appellant, *The Solicitor to the Treasury.*

## NORTHERN CIRCUIT.

LIVERPOOL, EASTER ASSIZES.

May 13th, 1895.

(Before HAWKINS, J.)

REG. v. MILLER. (a)

*Evidence—Admissibility of statement by prisoner and of consequential evidence—Prisoner's answers to constable's questions.*

*Where a constable has put questions to the prisoner, and after he has answered them has taken him into custody and charged him, and has subsequently investigated the truth of the answers, evidence of the prisoner's answers, and of their untruthfulness, may be admissible.*

*The question of the admissibility of such matters in any case must be determined with reference to the whole of the circumstances in that case.*

**W**ILLIAM MILLER was indicted for the murder of Edward Moyse. In support of such indictment it

(a) Reported by Sir HERBERT STEPHEN, Bart., Barrister-at-Law.

was (*inter alia*) proved that a detective inspector had called upon the prisoner, and had said to him "I am going to ask you some questions on a very serious matter, and you had better be careful how you answer." That he had then questioned the prisoner as to all his movements on the night of the murder and the following morning, and had asked him to produce his clothes, and, when they were produced, to account for bloodstains upon them; and had at the end of the conversation taken the prisoner into custody upon the charge of murder.

*McConnell* (with him *Collingwood*) for the prosecution proposed to give evidence of the answers which were given by the prisoner to the questions asked him by the inspector; and to give evidence that subsequent inquiries which had been made tended to show that the statements made by the prisoner, in answer to the inspector's questions, were untrue.

*Ross Brown* (with him *W. Russell*) on behalf of the prisoner objected to the admission of such evidence upon the authority of *Reg v. Gavin* (16 Cox C. C. 656); *Reg v. Brackenbury* (17 Cox C. C. 628); *Reg. v. Thompson* [17 Cox C. C. 641; 69 L. T. Rep. N. S. 23: (1893) 2 Q. B. 12] and *Reg. v. Male and Cooper* (17 Cox C. C. 689).

HAWKINS, J. admitted the evidence. He held that no inducement was held out to the prisoner to make any admission, and no threat uttered or any duress exercised towards him, and that therefore his answers were admissible, and that they were voluntary statements which the prisoner was under no obligation to make. It was impossible to discover the facts of a crime without asking questions, and these questions were properly put. He did not express dissent from any of the cases cited, but every case must be decided according to the whole of its circumstances.

Evidence was also admitted to the effect that the prisoner's answers were untrue.

*Verdict—Guilty.*

Solicitor for the prosecution, the Town Clerk of Liverpool; for the defence, *W. H. Quilliam*.

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Evidence—  
Admissibility  
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## COURT OF APPEAL.

Nov. 29, 30, and Dec. 1, 1894.

(Before Lord Esher, M.R., Lopes and Rigby, L.JJ.)

REID v. WILSON AND WARD.

REID v. WILSON AND KING. (a)

APPEAL FROM THE QUEEN'S BENCH DIVISION.

*Lord's Day Observance Act, 1781—Entertainment or amusement—“Keeper” of hall—Persons “managing or conducting” entertainment—21 Geo. 3, c. 49, ss. 1 and 2.*

*By sect. 1 of the Lord's Day Observance Act, 1781, the “keeper” of any house, room, or place which is opened or used for public entertainment or amusement on Sunday, to which persons are admitted by payment, is liable to forfeit 200l., and the person, “managing or conducting such entertainment or amusement” is liable to forfeit 100l., and, by sect. 2, any person who shall “appear, act, or behave himself as master or as the person, having the care, government, or management of any such house, &c., shall be deemed and taken to be the keeper thereof.”*

*A hall, which belonged to a company in liquidation, was let to a society for Sunday lectures, which the jury found to be entertainments or amusements in contravention of the Act. Wilson, who had been secretary of the company before the liquidation, and afterwards acted as solicitor to the liquidator, let the hall to the society for these lectures. A licence for music and dancing on week days had been granted to him in respect of the hall, but he had no personal interest in the hall. Ward and King each acted as chairman at one of these lectures; each of them introduced the lecturer, and then left the platform and sat amongst the audience:*

*Held (affirming the judgment of Mathew, J.), that Wilson was not the “keeper” of the hall, and that Ward and King were not persons “managing or conducting” the entertainment or amusement within the meaning of the Act, and that they were not liable to the penalties.*

**T**HIS was an appeal by the plaintiff from the judgment of Mathew, J., upon further consideration after trial with a jury in Middlesex (*ante*, p. 11).

The plaintiff appealed.

(a) Reported by J. H. WILLIAMS, Esq., Barrister-at-Law.

Sir *R. E. Webster*, Q.C. and *C. M. Chapman* for the appellant.

*Robson*, Q.C. and *Corrie Grant*, for the respondents, were not heard.

LORD ESHER, M.R.—I have no doubt at all what our decision ought to be. This Act of Parliament, which is a penal Act, ought to be construed strictly and applied strictly. The first question is whether the defendant Wilson was the “keeper” of this hall within the meaning of sect. 1 of the Lord’s Day Observance Act, 1781. The jury found that what took place was an “entertainment” within the meaning of the Act. We have, therefore, to see whether the defendant Wilson was the keeper of this hall which was to be deemed to be a disorderly house. He had been the secretary of the company which owned the hall, and, if the company had continued to exist, the company and not Wilson would have been the letter of the hall. After the company went into liquidation Wilson ceased to be the secretary, and he did not become secretary under the liquidator, because the liquidator did not so appoint him. He was a solicitor, and appears to have assisted and advised the liquidator; he let the hall to the Leeds Sunday Lecture Society on behalf of the liquidator. Even if Wilson had himself let the hall, he would not have been the “keeper” of the hall; not even if he had let it for the very purpose of giving an “entertainment,” or in such a way that the tenant might use it for the illegal purpose; in such cases the tenant is the keeper of the hall. Therefore Wilson was in no sense the “keeper” of the hall. He had got a licence for music and dancing in the hall, in order that he might be able to use it for that purpose on days other than Sunday; but that fact is quite immaterial. Then did he “appear, act, or behave himself as master, or as the person having the care, government, or management” of the hall so as to be “deemed to be the keeper thereof” within sect. 2 of the Act? I think not, for he did nothing more than let the hall. The case against him, therefore, entirely fails. Then, as to the other defendants, Ward and King. Ward was made the chairman of the meeting, that is, of the audience, but as such he had no power to arrange, alter, or interfere with the entertainment. Even if he had power to prevent disorderly conduct, that was no part of the entertainment. He was, therefore, in no sense the person “managing” or conducting such entertainment or amusement, or acting as master of the “ceremonies” so as to be liable to a penalty under the Act. The same observations apply to King, who was chairman of the second lecture. The plaintiff has proceeded against the wrong persons, and his appeal must be dismissed.

LOPES, L.J.—I am of the same opinion. This is a penal statute, and it is a well-established rule that, in proceedings under such statutes, the persons proceeded against must be clearly brought within the description given by the statute of persons who are liable to the penalty. First, as to the case of the defendant Wilson. It is said that he is liable, because he

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“manager”—  
21 Geo. 3,  
c. 49, ss. 1, 2.*

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WARD.  
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*Lord's Day  
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"Manager"—  
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was the "keeper" of the hall. In my opinion he only let the hall as the agent of the liquidator of the company which was in liquidation. If Wilson were liable, any house agent who let a house, which was used for an entertainment of this kind, would be liable. The lecture for which this hall was let might have been as dull as anything could possibly be; and Wilson did not know what the nature of the lecture would be. Then it is said that the other two defendants are liable as the persons "managing or conducting such entertainment or amusement." They were the chairmen only, and, in my opinion, had nothing to do with the entertainment. The entertainment was in the hands of others, and the chairmen could not control the entertainment in any way. The Leeds Sunday Lecture Society controlled the entertainment. These entertainments are not within the statute, and cannot be made liable to penalties.

RIGBY, L.J.—I am of the same opinion. There was not sufficient proved against the defendant Wilson. In such an action as this the plaintiff must prove conclusively that the case comes within the statute. As to the other defendants, everything was disproved in their case. They were not managing or conducting the entertainment at all. The appeal fails, and must be dismissed.

*Appeal dismissed.*

Solicitors for the appellant, *Desborough, Son, and Prichard.*

Solicitors for the respondents, *Darley and Cumberland*, for *E. and H. Wilson*, Leeds.

## QUEEN'S BENCH DIVISION.

*Dec. 11 and 13, 1894.*

(Before POLLOCK, B. and GRANTHAM, J.).

HAMMOND (app.) v. PULSFORD (resp.). (a)

*Shop Hours Act, 1892 (55 & 56 Vict. c. 62), ss. 3, 4, 5—  
Offence created—Penalty omitted.*

*The Shop Hours Act, 1892, enacts, by sect. 3, that no young person shall be employed in or about a shop for a longer period than seventy-four hours, including meal-times, in any one week; by*

(a) Reported by W. H. HORSFALL, Esq., Barrister-at-Law.



*sect. 4, that in every shop in which a young person is employed a notice shall be kept exhibited by the employer in a conspicuous place referring to the provisions of this Act, and stating the number of hours in the week during which a young person may lawfully be employed in that shop; and by sect. 5, that where any young person is employed in or about a shop contrary to the provisions of this Act, the employer shall be liable to a fine not exceeding one pound for each person so employed :*

*Held, that the respondent was not liable to a fine under sect. 5, for having employed a young person in a shop in which the notice required by sect. 4 was not kept exhibited.*

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offence—  
Omission of  
penalty—  
Shop Hours  
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Statutory  
notice not  
exhibited—  
55 & 56 Vict.  
c. 62, ss. 3-5.

**C**ASE stated by justices.

At a petty sessions holden at the court of summary jurisdiction, Victoria-road, Aston, in and for the division of Aston, in the County of Warwick, on the 21st day of September, 1894, an information preferred by Jesse Hammond (hereinafter called the appellant), against Francis Pulsford (hereinafter called the respondent), under sect. 4 of the Shop Hours Act, 1892, charging that he, the said Francis Pulsford, on the 13th day of September, 1894, at No. 6, Barker-street, Aston, did employ Florrie Lamprell (a young person within the meaning of the Shop Hours Act, 1892) in or about a shop there being, contrary to the provisions of the said Act, to wit, that he, the said Francis Pulsford, did employ the said Florrie Lamprell in or about the said shop, in which shop a notice referring to the provisions of the said Act, and stating the number of hours in the week during which a young person might lawfully be employed in that shop, was not kept exhibited by the said Francis Pulsford, the employer of such young person, in a conspicuous place, was heard and determined by the said justices, and upon such hearing the information against the respondent was dismissed.

The appellant being dissatisfied with the decision of the said justices, they, in compliance with the application of the appellant, stated this case for the opinion of this Court.

On the hearing of the information, it was proved that the respondent did employ a young person within the meaning of the Shop Hours Act, 1892, and that the notice required to be exhibited by sect. 4 of the Act was not exhibited in the shop of the respondent. It was contended on behalf of the appellant that sects. 4 and 5 of the Shop Hours Act, 1892, should be read together, and that, although no penalty was specially provided in case default was made in exhibiting the notice under sect. 4, still the penalty enacted in sect. 5 was to be read and made applicable to neglect of the provisions of sect. 4, where a young person was employed.

The justices were of opinion that the information charged the respondent with committing an offence under sect. 4 of the Act, and that no penalty being provided for the contravention of this



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section, they could not convict the respondent, and they therefore dismissed the information.

*Pritchett* (with him *Evans Austin*) for the appellant.—It is submitted that the decision of the justices was wrong. It was contended that there was no penalty imposed by the Act upon an employer for not exhibiting the notice required by sect. 4. But a person employing a young person without exhibiting a notice employs such person contrary to the provisions of the Act, within the meaning of sect. 5, and is, therefore, liable to a fine of 1*l*. [GRANTHAM, J.—If he employed several persons he would be liable to a fine of 1*l*. for each person so employed, although they had not been employed for an illegal number of hours.] Yes. A similar notice is required by the Factory and Workshop Act, 1878 (41 Vict. c. 16, s. 78) to be exhibited in factories and workshops, and the occupier of the factory or workshop who neglects to do so is liable to a fine. [GRANTHAM, J.—The fine in the case of a factory or workshop is only 40*s*., whereas, if your contention is right, in the case of a shop it is 1*l*.] Sect. 88 of the Factory and Workshop Act, which is incorporated with this Act, provides a restraint on cumulative fines, so that an employer would not be fined in respect of each person employed because he had omitted to exhibit the necessary notice.

The respondent did not appear.

*Dec. 13.*—POLLOCK, B.—This was a case stated by the justices of the county of Warwick in order to obtain the opinion of this Court upon a point of law which arose before them. The respondent was summoned before them in order that he might be declared liable to a penalty for having a young person in his employment without having the notice required by the Shop Hours Act, 1892, exhibited on his premises. The justices thought that it was beyond doubt that the notice was required by the statute, but that the absence of the notice did not make the respondent liable to a penalty. The Shop Hours Act, 1892 (55 & 56 Vict. c. 62), was passed to amend the law relating to the employment of young persons in shops, and in furtherance of the scheme of the Acts relating to factories. It enacts by sect. 3 that no young person shall be employed in or about a shop for more than seventy-four hours in any one week, and by sect. 4 that a notice shall be exhibited by the employer referring to the provisions of the Act, and stating the number of hours in the week during which a young person may be lawfully employed in that shop. Then sect. 5 provides that where any young person is employed in or about a shop contrary to the provisions of the Act, the employer shall be liable to a fine of 1*l*. for each person so employed. On behalf of the appellant it has been argued that a penalty had been incurred by the respondent because he had employed a young person contrary to the provisions of the Act, viz., contrary to the provisions of sect. 4, because he had omitted to exhibit the notice required by that section. If he had been summoned for contravening the provisions of sect. 3, and the facts

proved that he had employed a young person for more than the legal number of hours, the employer would be clearly liable to a fine, for then the young person would be employed contrary to the provisions of the Act. But I think it would be wrong to hold that a young person was employed contrary to the provisions of the Act because the notice required by sect. 4 had not been exhibited. If the contention of the appellant were right, it would be a great hardship on the employer, for he would be liable to a fine of 1*l.* for each person employed, and the amount of the penalty would depend on the number of persons whom he employed. This seems to me to be a strong reason for presuming that the Legislature did not intend to include in sect. 5 such cases as the present. In the Factory and Workshop Act, 1878, there is a provision that a notice shall be affixed in the factory or workshop, and there is an express enactment in sect. 78 that the occupier of the factory or workshop who contravenes that provision shall be liable to a fine of 40*s.* But under sect. 4 of the Shop Hours Act there is no provision as to a fine, and sect. 5 does not deal with the case in question. The justices were of opinion that no penalty was provided for contravening the provision of sect. 4. I think that they were right in that opinion, and that this appeal must therefore be dismissed.

GRANTHAM, J.—I am of the same opinion. By the Factory and Workshop Act, 1878, provision was made to protect young persons against being employed for an excessive number of hours, and it prescribed the number of hours, during which they were allowed to work. In order that they might know what those hours were, the employer was required, by sect. 78, to affix a notice to the premises, setting forth the provisions of the Act, and if he omitted to do so he became liable to a fine not exceeding 40*s.* There is, therefore, in that section one offence specified, and one fine in respect of that offence. There has since been passed the Shop Hours Act, 1892, to protect young persons working in shops, and in that Act the draftsman, for the sake of brevity or for some other reason, has not followed the wording in the section in the Factory and Workshop Act, 1878. He has divided the provisions as to employing young persons for an illegal number of hours into two sections, and between these two sections he has placed one requiring a notice as to the hours to be exhibited on the premises. If he intended to make the employer liable to the same penalty in each case he has failed to do so. The whole object of the Act was to prevent young persons being employed more than seventy-four hours in any one week. I do not think it could have been intended that an employer should be fined 1*l.* for each person employed because he omitted to exhibit the notice; the penalty for that offence has been omitted. Sects. 3 and 5 deal with the offence of employing for an illegal number of hours, and provide the penalty for that offence. It seems to me to be a *casus omissus*, and no doubt it was intended that the penalty should be

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the same under this Act as under the Factory and Workshop Act, 1878. I think, therefore, that the justices were right, and that this appeal must be dismissed.

*Appeal dismissed.*

Solicitors for the appellant, *Field, Roscoe, and Co.*, for *Field and Sons*, Leamington.

## QUEEN'S BENCH DIVISION.

*Tuesday, Dec. 18, 1894.*

(Before WILLS and WRIGHT, JJ.)

SMART AND SON (apps.) v. WATTS (resp. (a))

*Margarine — Marking cases and wrappers — Substance sold as butter — Purchase for purpose of analysis — Admission by seller that substance was margarine — Analysis condition precedent to prosecution — Margarine Act, 1887 (50 & 51 Vict, c. 29) — Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63).*

*The Margarine Act, 1887, provides by sect. 6 that every person selling margarine by retail, save in a package duly branded or durably marked, shall in every case deliver the same to the purchaser in or with a paper wrapper, on which shall be printed in capital letters "margarine;" and by sect. 12 that all proceedings under the Act shall, save as expressly varied by this Act, be the same as prescribed by the Sale of Food and Drugs Act, 1875.*

*The Sale of Food and Drugs Act, 1875, provides that an inspector may obtain samples of food and drugs, and if he suspect the same to have been sold to him contrary to the provisions of the Act, he shall submit the same to be analysed, and shall notify to the seller his intention to have the same analysed. If it appears from the certificate of the analyst that an offence against some one of the provisions of the Act has been committed, the person causing the analysis to be made may take proceedings for the recovery of the penalty therein imposed:*

*Held, that it was a condition precedent to the right of a purchaser to take proceedings for a penalty under the above Acts that he*

(a) Reported by W. H. HORSFALL, Esq., Barrister-at-Law.

*should obtain a certificate from the analyst, and that this applied even in the case where a person admitted that he sold margarine contrary to the provisions of the Margarine Act, 1887.*

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SON  
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**C**ASE stated by justices.

At a petty sessions holden at Edgware on the 4th day of July, 1894, the respondent preferred two complaints against the appellants under sect. 6 of the Margarine Act, 1887, as follows: (1) That on the 18th day of June, 1894, the appellants exposed for sale by retail margarine, without having attached to each parcel thereof, so exposed in such manner as to be clearly visible to the purchaser, a label marked or printed in capital letters, not less than a quarter of an inch square "margarine;" and (2) that at the same time and place the appellants sold margarine by retail without delivering the same to the purchaser in or with a paper wrapper on which was printed in capital letters not less than a quarter of an inch square "margarine."

*Margarine—  
Marking cases  
and wrappers  
—Margarine  
Act, 1887—  
Sale of Food  
and Drugs  
Act, 1875.*

The two complaints were heard together, and the respondent gave evidence as follows:

I am inspector under the Food and Drugs Act to the Middlesex County Council. On the 18th June last I called at the defendants' shop at Hendon, provision dealers. I saw butter exposed for sale on the counter. Mrs. Skillman came to serve me. I asked for a quarter of a pound of this butter, pointing to butter on which was a label "8." She served me and I paid 2d. for it. I produce the article as served to me. The paper wrapper is plain paper. No designation of what it is is on the paper, or on the article. The butter was on a tub turned upside down on the counter. I told her who I was, the inspector under the Food and Drugs Act, and called her attention to the label. She said: "This is not butter, it is margarine." I called her attention to the label, and to its being served in plain paper. She said she was serving temporarily as the manager was out. I asked her if she had changed the label, she said "No." I said I should take proceedings. She sent for Mr. Skillman, the manager. He said it was margarine, that he had a stamp for it, but he did not think it was sufficient.

In cross-examination: I did not give them notice that it was purchased for analysis. I have not submitted it for analysis because Mr. Skillman told me it was margarine. After the purchase I did not think it was necessary to go to that expense. The tub had the word margarine on it, but it was upside down and not readable.

No evidence was offered by the appellants, but it was contended on their behalf (1) That the statements of Mrs. Skillman, and the manager, Mr. Skillman, that the article sold was margarine were not made in the presence or hearing of the appellants, and consequently were not admissible as evidence, and, therefore, that there was no evidence that the article sold was margarine. (2) That the proceedings under the Margarine Act, 1887, s. 12, should be the same as those prescribed by the Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 18), that under sect. 14 of that Act the purchaser should have notified his intention to have the article analysed, and should have divided it into three parts, leaving one such part with the seller or his agent. That under sects. 20 and 21 of the Sale of Food and Drugs Act the complainant should have had one portion of the

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article analysed, and should have produced the certificate of the analyst as to the result of such analysis. That such notification, division, and analysis were conditions precedent to a prosecution, and that the same not having been made the prosecution must fail.

*Margarine—  
Marking cases  
and wrapper  
—Margarine  
Act, 1887—  
Sale of Food  
and Drugs  
Act, 1875.*

The justices convicted the appellant and imposed a fine.

The question for the opinion of the Court is, whether the justices were justified in point of law under the circumstances in convicting the appellants.

*Bonsey* for the appellants.—It is submitted that the justices were wrong in convicting the appellants. The respondent failed to comply with the requirements of the Sale of Food and Drugs Act, 1875, in not leaving a part of the substance with the appellants' manager, and in not submitting it to the public analyst. He ought to have warned the appellants' manager that he was going to send the sample to the public analyst: (*Barnes v. Chipp*, 38 L. T. Rep. 570; 3 Ex. Div. 176.) It is a condition precedent to the right to recover the penalty that the respondent himself should have complied with the requirements of the Act: (*Parsons v. Birmingham Dairy Company*, 9 Q. B. Div. 172.) The principle in those cases applies to proceedings under the Margarine Act, 1887.

*J. O. Earle* for the respondent.—There was ample evidence that an offence against the Act had been committed both in the admissions of the appellants' manager and in the appearance of the substance which was produced in the court below. It would be a very unnecessary expense to have an analysis, when it was admitted that the substance was margarine. The quality of the substance is not material, and, as it was margarine, it must be served in a certain way. [WRIGHT, J.—But sect. 20 of the Sale of Food and Drugs Act, 1875, provides that proceedings are to be taken only on the result of the analysis.] If that be so, it must be admitted that we have not complied with that requirement.

WILLS, J.—I regret that we have to come to the conclusion in this case that the conviction must be quashed, but it seems to me that from the language of the Act we have no alternative. I think that sect. 8 of the Margarine Act, 1887, does not apply to this transaction. But by sect. 12 of that Act, certain provisions of the Sale of Food and Drugs Act, 1875, are expressly incorporated with that Act, and those provisions have not been complied with in the present case. No doubt this will entail a good deal of what appears to be needless expense, and I regret that this should be so, but we cannot overrule the words of the Act of Parliament.

WRIGHT, J.—I am of the same opinion.

*Conviction quashed.*

Solicitors for the appellant, *Neve and Beck*.

Solicitor for the respondent, *R. Nicholson*.

## QUEENS BENCH DIVISION.

*Monday, Dec. 10, 1894.*

(Before WILLS and WRIGHT, JJ.)

HARRIS (app.) v. THE LONDON COUNTY COUNCIL (resps.). (a)

*Weights and measures—Milk churns or cans—Churn used for conveyance of milk—Measure for use for trade—False or unjust—Weights and Measures Act, 1878 (41 & 42 Vict. c. 49), s. 22, 25, 44—Weights and Measures Act, 1889 (52 & 53 Vict. c. 21), s. 7.*

*The appellant, a farmer, supplied milk to a customer, to whom he sent it through a railway company in churns or cans professing to contain a specific amount of imperial measure, and containing a gauge whereby the quantity of the milk was marked. Both the railway company and the purchaser relied on the accuracy of the gauges. Two of the churns, on being tested by the respondents' inspector, were each found to contain two pints less than the gauge indicated. The appellant was summoned and convicted under sect. 25 of the Weights and Measures Act, 1878 (41 & 42 Vict. c. 49), for having in his possession for use for trade measures which were false or unjust.*

*Held, that the conviction was right. The churns used came within the meaning of sect. 25, and were measures for use for trade. The essence of the legislation is, that for trade purposes dealings in quantities should be carried on with respect to accurate and not with respect to rough standards of weight and quantity.*

CASE stated by one of the metropolitan police magistrates. The appellant was summoned by the respondents under sect. 25 of the Weights and Measures Act, 1878 (41 & 42 Vict. c. 49), at the Clerkenwell Police-court, for having had for use for trade two measures, namely, two milk churns, which were alleged to be false or unjust.

The facts proved at the hearing of the summons showed that an agreement was entered into between the appellant, a farmer at Stoke-on-Trent, and one, E. Handsley, a dairyman in London, whereby the former agreed to supply milk in his own churns to the latter. The milk was delivered by the appellant in churns, each capable of containing about sixteen or seventeen gallons. Each churn was fitted inside with gauges, so as to indicate the number of imperial gallons of fluid in the churn. The churns were conveyed by the North Staffordshire Railway Company

(a) Reported by HENRY LEIGH, Esq., Barrister-at-Law.



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COUNCIL.

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*Weights and  
measures—  
“False or  
unjust”*

*measure—  
Milk churn—  
Inaccurate  
gauge—  
Measure used  
for trade—*

*41 & 42 Vict.  
c. 49, s. 22—  
52 & 53 Vict.  
c. 21, s. 7.*

under a contract between them and the appellant, and were delivered to the purchaser at Euston Station. The consignments usually consisted of from two to six churns. The appellant was accustomed to attach to one of the churns of each consignment a label on which he stated the number of churns in the consignment, and the aggregate number of gallons. The amount paid by the appellant to the railway company was  $1\frac{1}{2}d.$  per gallon, or part of a gallon, and his contract with the railway company contained the following terms :

Each can must have the number of imperial gallons it is capable of taking marked upon it, and the inside of each can must be marked to indicate the space occupied by four gallons and by each additional gallon. . . . Senders must in each case sign consignment notes showing the actual quantity of milk in imperial gallons in each can to be forwarded.

The railway company treated the churns as measures of the quantity of milk carried, and tested such quantity only by the gauges inside the churns. Evidence was given by the purchaser that the churn gauges were the measure by which he received the milk, and that he had never tested the quantity of milk.

On the 26th day of April, 1894, the appellant consigned from Leigh to Euston Station four churns, a label being attached to one of them showing the total amount of the consignment was sixty-six gallons. On the 27th day of April, 1894, a similar consignment was made by the appellant of three churns, a label being attached to one of them showing the total amount of the consignment was fifty gallons. Two of these churns, one from each of the above consignments, were subsequently handed by the purchaser to the London County Council inspector to be tested, and each when filled to the sixteen gallons mark was found to contain two pints less than sixteen gallons.

It was contended on behalf of the appellant, (1) that the said churns were not measures within the meaning of sect. 25 of the Weights and Measures Act, 1878, but were merely conveyances for the consignment of milk from the farmer to the dealer, and that the gauging inside the churn was merely as a guide to the railway company, whose rates were fixed at so much per gallon or part of a gallon, and were not affected by any smaller quantity, and consequently the appellant came within the exception provided by sect. 22 of the same Act ; (2) that it would be impossible to enforce the provisions of the Act with respect to milk churns, as, owing to their necessarily receiving rough usage in transit, indentations were frequently made which reduced the capacity of the churn, and consequently the gauging would not remain correct ; (3) that the appellant could not be convicted on the summons, because the inspector when testing the churns had not complied with sect. 44 of the Weights and Measures Act, 1878, and sect. 7 of the Weights and Measures Act, 1889 (52 & 53 Vict. c. 21), inasmuch as if the churns are “measures” there should have been a standard churn with which to compare

them, but it was admitted that no standard milk churn had been supplied to, or was in the possession of the local authorities. The respondents contended that, having regard to the facts of the case, the churns were "measures," and were represented by the appellant as containing particular amounts of imperial gallons.

The magistrate found that in the dealings between the appellant and Handsley, the purchaser, and between the appellant and the railway company, the gauged churns were used as measures and that the two churns which were tested did, in fact, each contain two pints less than sixteen imperial gallons. Upon these facts he held that the two churns were measures within the meaning of sect. 25 of the said Act, and that they were false or unjust, and he accordingly convicted the appellant.

The question of law for the opinion of the court was whether upon the facts the appellant was rightly convicted.

Sect. 25 of the Weights and Measures Act, 1878 (41 & 42 Vict. c. 49), provides that :

Every person who uses or has in his possession for use for trade any weight, measure, scale, balance, steelyard, or weighing-machine, which is false or unjust, shall be liable to a fine not exceeding five pounds . . .

Sect. 22 provides that :

Nothing in this Act shall prevent the sale, or subject a person to a fine under this Act for the sale, of an article in any vessel, where such vessel is not represented as containing any amount of imperial measure, nor subject a person to a fine under this Act for the possession of a vessel where it is shown that such vessel is not used nor intended for use as a measure.

*Bosanquet*, Q.C. (*Avory* with him) for the appellant.—The question here is, whether a milk churn, used for conveying milk, is a "measure," within the meaning of sect. 25 of the Weights and Measures Act 1878. Any vessel marked or gauged as containing up to such mark a certain quantity is not a "measure" within the meaning of the Act, unless it is a measure "for use for trade." It is submitted that these churns are not such measures. They are mere receptacles for conveying the milk in, and the gauge within them is only placed there for the convenience of the railway companies. The gauge is not to be taken as indicating an accurate measure, for though, when the churn is in a perfect state, it holds a known quantity, yet, after a short time, it becomes indented by being knocked about in transit, and is no longer an accurate measure. Further, if these churns are measures within sect. 25, they must bear a Government stamp (see sects. 28 and 29), but no such stamp is to be found on them. These churns, it is submitted, come within the exception of sect. 22, for they are not used nor intended for use as measures, and therefore the magistrate was wrong in convicting the appellant.

*Cripps*, Q.C. (*Daldy* with him) for the respondents.—The churns were used as measures by the appellant, who represented to the railway company and to the purchaser that they contained a specified quantity, and they undoubtedly were used as measures

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Measure used  
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Measure used  
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52 & 53 Vict.  
c. 21, s. 7.*

for trade purposes within the Act, and the magistrate, on the facts of the case, was right in so finding. These measures were found to be inaccurate to a certain degree, and the magistrate was right in finding they were “false or unjust,” and in convicting the appellant. It is essential for the purposes of this Act that accurate and not rough measures should be used, and if a dealer uses a measure that has become inaccurate, he must take the consequences.

WILLS, J.—I am of opinion, notwithstanding the doubts which Mr. Bosanquet succeeded in raising in my mind, that the learned magistrate was right with regard to both parts of his finding. He has found that, both as between the seller and purchaser of the milk, and as between the seller and the railway company, these churns were used as measures. That they were so used as between the seller and the railway company there seems to be really no contest at all, and I cannot conceive that there can be. It is quite obvious that it is impossible for the railway company, for the purposes of the railway, to have any other gauge by which to judge of the quantity of the milk. That is sufficient to support the conviction. But I go further, and say that in my opinion the magistrate was right on the other point also. The question whether they were used as measures or not between the parties is one of fact for him. It does not follow with absolute necessity from the provision as to gauging in the contract that it was the measure adopted between them; but when it is found that at the purchaser's end no measurement of the milk took place, and that the churns, professing in this way by this measure to hold sixteen or seventeen gallons, were forwarded without further verification, that is, I think, strong evidence that they were so used. The only remaining piece of evidence required to make out that they were used as measures between the parties is, that the seller of the milk, as well as the purchaser, should have been aware of the course of business pursued at the other end. I should think the great probability is, that it was taken for granted between the parties that that was the mode of dealing, and was the ordinary mode used in the trade; and, if that is so, every link in the chain of evidence would be complete. It is sufficient for me to say, at all events, that there was evidence before the magistrate on which I think he could properly find that the course of business between the parties was that the churns were marked for the purpose of measurement; and I agree with Mr. Cripps that it is very important not to fritter away an Act of Parliament of this kind by any nice distinctions or qualifications, and that the essence of all legislation of this character is to say that rough measures should not be used for trade purposes; that the interests of society require that for trade purposes dealings in quantities shall be carried on with respect to accurate, and not with respect to rough standards of weight and quantity. I think, therefore, that there is quite enough to justify the magistrate in finding that these churns

were dealt with as between the parties, as well as between the seller and the railway company, as trade measures. That is really the only question in the case, because, if the magistrate has found that they were false, I should think he was quite justified in so finding; but whether he was justified in that or not, it was clearly a matter for him to say whether the departure from accuracy was of a sufficient amount to justify him in treating the measure as false, because of course in this, and in all other matters of common life, there must be some reasonable allowance made for commercial necessities and for the impossibility of filling any vessel of this kind with absolute mathematical accuracy. I do not, however, see any reason to suppose that the magistrate has gone wrong in that respect.

WRIGHT, J.—I am of the same opinion. Now that I am fully informed of what took place before the magistrate, I come to the same conclusion, because I think that, although the point of the measurement capacity of the churns having been reduced by the shaking and so forth in travelling to and fro by the railway was not made, or if made was not proved, I think we must assume that the magistrate thought he had ground for finding and did find, as I think he might well do, that these particular churns were originally falsely constructed to a uniform extent of a substantial character; because a quart on each churn means, according to the price in the contract,  $1\frac{1}{2}d.$  a day on each of these churns for every day through the period. That is certainly substantial. I am inclined, therefore, to think that on both parts of the case the magistrate was right; I certainly think he was right after hearing Mr. Cripps' argument on the railway point, because when it is once pointed out that the railway contract does require the contents of the churns to be marked accurately for each gallon, I think there is nothing in that part of the case at all. It remains to say that it seems to me, notwithstanding the requirements of the Act, some regard ought to be had to the nature of the trade and the nature of the receptacles, and if it really appeared, as it will inevitably in the case of milk churns, that there should be some diminution of capacity by injury in transit which must occur from day to day, I should hesitate before I held that the churn could be regarded as a false or unjust measure merely because it was fractionally reduced to this extent. However, we have not to decide that. The appeal will be dismissed with costs.

*Appeal dismissed accordingly.*

Solicitors for the appellant, *Morris and Bristow*, agents for *Smith, Leech, and Bostock*, Derby.

Solicitor for the respondents, *W. A. Blaxland*.

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## CROWN CASES RESERVED.

*Saturday, Dec. 8, 1894.**(Before Lord RUSSELL, C.J., POLLOCK, B., HAWKINS, WRIGHT,  
and LAWRENCE, JJ.)**REG. v. WORTON. (a)**Gaming—Ready-money betting—Using place for betting with  
persons resorting thereto—Betting with customers resorting to  
public-house—Money passing outside house—Betting House Act,  
1853.**A person who habitually resorts to the bar of a public-house with a  
view to meet persons coming there in the character of customers  
to bet with him upon the contingency of horse racing, may be  
convicted under 16 & 17 Vict. c. 119, s. 1, of using such place  
for the purpose of betting with persons resorting thereto, whether  
the money staked upon the results of such races is handed to him  
inside or outside the house.*

CASE reserved by the learned recorder upon the trial of an  
indictment for misdemeanour, at the last Michaelmas  
Quarter Sessions for the city of Birmingham, in which it was  
stated as follows :

Edwin Worton was tried before me on an indictment for  
misdemeanour, which contained eight counts charging the  
defendant with offences under sect. 1 of the Betting Act (16 &  
17 Vict. c. 119).

The following evidence was given :

Charles A. Lea, firm of C. J. and Lister Lea and Sons, surveyors, prepared plan of  
William IV. beerhouse, Summer-row, Birmingham (put in). Entry from Summer-  
row into bar. Counter in the bar. Smoke room behind bar. At side of house is an  
entry and a door leading from Summer-row into entry, and over the door a plate glass  
with "smoke room" on it. Up entry is a serving window from bar into entry, and  
further down the entry is a door leading into the smoke room behind the bar, this  
door is the entrance for the general public into the smoke room. There are two gas  
jets in the entry connected with the licensed premises. Elevation produced and  
put in.

Cross-examined Mr. A. Young.—The house on other side of entry is occupied by  
Littlewood as a shop. The entry is a party passage to both houses. Littlewood's  
house has a door opening into the entry. The front door of the beerhouse opening on  
to the street is a swing door, swinging inwards and self-closing. The step is outside  
this door.

Henry Burrough, clerk to the overseers of parish of Birmingham. — The  
William IV., Summer-row, is in the parish.



Thomas Harris, police constable.—On Friday, 24th Aug. last, I went with Police Constable Parrack to the bar of the William IV. at 12 noon; stayed there till 12.40. Defendant not there when I went in first. Mr. Lattimer, the landlord, was in charge of the bar. Five men there looking down the sporting papers on the table and on the counter—*Tissue* and *Sporting Chronicle*. Just after we got in a youth came in and asked the landlady for 6d. She took a small black book and called her son, and said the youth says he has 6d. to come. The son looked down the book and gave the youth 6d. Defendant was not in the bar at this time. I took the *Tissue* and a slip of paper from off the wall. I wrote down on the paper the names of two horses from the *Tissue*—Houndsditch and Hiawatha. I enclosed 6d., and signed the paper F. Guy. Then defendant came into bar, and immediately after a youth came in. He had a packet in his hand. After speaking to defendant they left together. Defendant immediately returned. In a few minutes I beckoned to defendant. Parrack and I went outside the front door, defendant followed and stood in the doorway on the step with his left hand on the door. I handed him the packet I had previously made up, and he received it with his right hand, and went back into bar, taking packet with him. We went away.—Saturday, 25th Aug., Parrack and I went again at 12.10 p.m.; stayed till 2.15 p.m. We went into bar. I did not think defendant was inside when we went in. Landlord and landlady serving behind counter. Twenty-four or twenty-five men present writing out papers, making them into packets and enclosing money, writing from different papers—*Tissue* and *Sporting Chronicle*—some had their own newspapers. I saw the name of one horse, Soar, written down by a man who sat next me. They went outside after they had made up the packages. Some of them came back. On one occasion Parrack and I went out and found defendant on the footway in the street. The men gave him the packages they had previously made up. Defendant stood on footpath immediately in front of bar door, about three feet off. I saw three persons give him packets. About 1.20 p.m. defendant came into bar, looked round. Two men sat at a table at back of door, they had previously made up packets, the one nearest the door took the packet from the other and handed them to the defendant in the bar. I saw each of the two men make up the packets and saw them write. They had the *Star*. They inclosed money. Defendant then went outside. I made up a packet and wrote from *Sporting Chronicle*, "St. David, 6d. win, 6d. 1, 2, 3; Opoponax, 6d. win, 6d. 1, 2, 3; Simon Burn, 6d. 1, 2, 3, and Soar 6d. win." I signed it F. Guy, and inclosed 3s. I then went outside and gave the packet to defendant, who stood on the footway by the shop next door talking to Lattimer, the landlord. Tuesday, 28th Aug., went again with Parrack; 12 noon till 1.55 p.m. Landlady in charge of bar. Five men there; soon afterwards defendant entered and sat down on a bench. Parrack asked the landlady for the *Tissue*, and she gave it him; one of the men who was talking to the landlady said, in the hearing of the defendant, "You know that place in Sparbrook where old Silk used to bet, they have made a good house of it. He is very particular, he won't even allow them to write out a paper in the house." The landlady replied, "If I had to stop my customers from writing out their papers I should offend them all." I saw twelve packets made up in the house from sporting papers and money put into them. Defendant was present when some of them were being made up. As soon as the landlady had finished her conversation defendant went out. I took a strip of paper and wrote down "Aberdeen 2nd and Shima," and signed it F. Guy. I inclosed 6d. York races were on then, and those horses ran there. I took my packet outside, but defendant was not there.—Wednesday, 24th Aug., I went again at 1.15 p.m. alone, and remained till 3.30 p.m. Defendant sat on a bench in the bar. He had a packet in his hand; as soon as I got in he got up and went up the entry. I saw fourteen packets made up in the bar in his absence and money put in them. The men went out at front door, and I saw several of them go by the bar window up the entry in the direction in which defendant had gone. I went out and returned, and Superintendent Beard came in with a search warrant.

Cross-examined, Mr. A. Young.—This is my note-book. I wrote the notes as soon as I left the premises. Parrack did not read his note-book to me, nor did I read mine to him. I don't say that Parrack and I did not have a conversation, but not with regard to what I was to put down in my book. I would not speak to my note word for word, but in substance.

On the 24th Aug. defendant kept the door open with his left hand; he could not stand on the doorstep when the door was shut—not in the position in which I saw him—he would have to hold on to the door if he did. On the 24th the only packet I saw handed to the defendant was the one I handed him myself. On the 25th I saw two packets handed to him inside the bar-room, and the rest outside. Two or three yards from the door outside I saw the two men write on the paper with a lead pencil; both wrote; they were mechanics I think.

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Cross-examined, Mr. Parfitt.—On the 24th defendant stood on a doorstep keeping the door open; I stood close in front of him.

Mr. Lea recalled.—I think a man would not have more than 11 inches of step to stand on when the door was shut.

Edward Parrack, police constable.—23rd Aug. I went to William IV. by myself, 11.45 a.m. till 12.30 p.m., into bar; landlady in charge; defendant inside the bar-room. I saw a man make up a packet, writing from the *Daily Post*, inclosing 1s. He offered it to defendant, who refused to take it, and said, "Come outside." Defendant then went to the door and stood on the doorstep, whilst the man stood on the footway and gave him the packet; he held the door with his left hand, and took the packet with his right hand. Defendant then came back into the bar and said to me, "I wish somebody would send us some customers." The *Tissue* was on the counter and *Sporting Chronicle* on a table and *Daily Post* on another table. Defendant was in the room when the man was making up the packet.—24th Aug. went with Harris, police constable, 12 noon to 12.40 p.m. Harris took *Tissue*, made up a packet, put in 6d., and signed it F. Guy. There were slips of paper hanging on a rail to the right of the counter, hid by an advertisement card. I saw people go to the slips, lift the card up, tear off a slip, and then go and write out a packet. I saw a youth come in and offer defendant a packet in the bar-room; youth said something, and both went out together; defendant returned immediately. We then got up and defendant followed us. Harris gave him his packet first, same position as previous day, except that he held the door with his foot; defendant returned into the room and we went away.—25th Aug. we went 12.15 to 2.50 p.m. Defendant outside at 1.20 p.m.; defendant came in; men in bar; had been writing on papers and making up packets with money inside. When they had prepared the packets they used to go outside. I saw three men hand defendant packets on the footway; he stood near the door. At 1.20 p.m. defendant came in and looked round; a man who sat near the door handed him two packets both made up in the house. I saw the name of one horse on one of the packets; money in each packet. Soon afterwards defendant went outside. We went out. Defendant was standing just above entry talking to landlord. Harris gave him the packet he had made up, and we went away.—28th Aug. I went again with Harris, 12 to 1.55; defendant outside. He came into bar just after we came in and sat down. No packet received that day.

Cross-examined, Mr. A. Young.—This is my note-book—clean from memory. I wrote it at different places. Harris and I did not compare our note-books.

John Moss, P.C.—29th Aug. I went to William IV. with Superintendent Beard and a search warrant. Slips produced were hanging on the wall of the bar with excursion bills over them.

Job Troughton, P.C.—I know the premises in question. The door leading from the entry to Summer-row is closed and locked at closing time.

The plan and elevation put in are annexed and are to form part of this case.

At the close of the evidence for the prosecution Mr. Alfred Young, on behalf of the defendant, referred to the case of *Bond v. Plumb* [(1894) 1 Q. B. 169], and submitted that there was no evidence to go to the jury of the defendant using a place for the purpose of betting with persons resorting thereto, although there was evidence of his using a place for the purpose of money being received as the consideration for an undertaking to pay thereafter money on an event relating to a horse race.

I held that there was evidence to go to the jury, but agreed to state a case for the opinion of the Court for Crown Cases Reserved.

Counsel for the defendant addressed the jury on his behalf, but called no witnesses.

I advised the jury to have regard more particularly to counts 1, 3, and 5 of the indictment, and directed them that there were two main questions for their consideration: firstly, whether the defendant did use the bar-room on the days in question or on any

of them ? and, secondly, if he did, was he using it for the purpose of betting with persons resorting thereto ?

I also directed them that, if whilst he was using the room the defendant intended to bet with persons resorting thereto and merely went out to take their bets outside and then came back to be ready for more, this would be no more than a colourable evasion of the Act, and what took place outside would be strong evidence of the purpose for which defendant was using the room.

The jury found the defendant guilty on the first, third, and fifth counts of the indictment, but acquitted him on the other counts. After they had delivered their verdict, I asked them, at the request of counsel for the defendant, to find specifically whether the defendant in point of fact received the two packets in the bar-room on the 25th day of August. The jury found this in the affirmative.

I fined the defendant 20*l.*, and ordered him to pay the taxed costs of the prosecution. The fine and costs were paid to the clerk of the peace for him to hold pending the decision of the Court in this case, and the defendant was released from custody.

The question for the opinion of the court is, whether there was any evidence to go to the jury on counts 1, 3, or 5 of the indictment. If the Court should be of opinion that there was evidence to go to the jury on any one of those counts, judgment is to stand on such count or counts that the defendant be fined 20*l.* and pay the costs of the prosecution. Otherwise the judgment is to be reversed and the defendant is to be acquitted, and the moneys paid for fine and costs are to be returned to him.

#### The Betting House Act, 1853, enacts :

Sect. 1. No house, office, room, or other place shall be opened, kept, or used for the purpose of the owner, occupier, or keeper thereof, or any person using the same or any person procured or employed by or acting for or on behalf of such owner, occupier, or keeper, or person using the same, or of any person having the care or management or in any manner conducting the business thereof betting with persons resorting thereto or for the purpose of any money or valuable thing being received by or on behalf of such owner, occupier, keeper, or person as aforesaid as or for the consideration for any assurance, undertaking, promise, or agreement, express or implied, to pay or give thereafter any money or valuable thing on any event or contingency of or relating to any horse race or other race, fight, game, sport, or exercise, or as or for the consideration for securing the paying or giving by some other person of any money or valuable thing on any such event or contingency as aforesaid, and every house, office, room, or other place opened, kept, or used for the purposes aforesaid, or any of them, is hereby declared to be a common nuisance and contrary to law.

No one appeared either in support of or against the conviction.

Lord RUSSELL, C.J. delivered the judgment of the Court.—I am not surprised that no counsel appears to argue in support of this appeal, for the question seems to me very clear. The defendant was indicted before the Recorder of Birmingham at the Michaelmas Quarter Sessions upon an indictment which contained several counts. The jury returned a verdict of guilty on the first, third, and fifth counts, which charged the defendant with having

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on each of three days, the 23rd, 24th, and 25th days of August, 1894, used the bar of a certain beerhouse for the purpose of betting with persons resorting thereto, contrary to the statute 16 & 17 Vict. c. 119, s. 1. Evidence was given that on the days in question the defendant resorted to the bar of this public-house, and that a considerable number of persons came here for the purpose of betting. Provision seems to have been made in the house itself for betting, for slips of paper were provided, on which persons who intended to bet wrote the names of the horses they wished to stake their money upon, wrapping up in the slip the sum of money they wished to stake. The usual practice seems to have been that the person desiring to bet, after writing the name of the horse and wrapping up the stake, went outside the public-house and there handed over the slip with the stake wrapped up in it. But the jury expressly found that on two of the occasions in question the papers and stakes were handed to the defendant inside the bar. At the close of the case the counsel for the defendant made what I must characterise as a very extraordinary submission, that there was no evidence to go to the jury of the defendant using a place for the purpose of betting with persons resorting thereto, although there was evidence of his using a place for the purpose of money being received as the consideration for an undertaking to pay thereafter money on an event relating to a horse race. In other words, the submission was that the defendant had used the place for the purpose of receiving money, for bets—had, in fact, carried on ready-money betting. The Act of Parliament says: [His Lordship read sect. 1 of 16 & 17 Vict. c. 119, *supra*.] Of the two clauses of the section the first covers the use of a place for betting, whether of the kind known as ready-money betting or not. The second clause is pointed more directly at ready-money betting. For my part I should not hesitate to hold, and I think that the rest of the court would hold, that if a man goes to a house for the purpose of receiving money from persons on account of bets, he is using the house for the purpose of betting with persons resorting thereto, whether the money is actually received inside the house or outside. It is not necessary to refer to the case of *Bond v. Plumb* further than to say that it is no authority in favour of the defendant, and that there is an offence under sect. 1 of the Act, whether the user of the place is for the purpose of betting with persons resorting thereto or for the purpose of receiving deposits of money for the purpose of betting. The question here is, whether there is any evidence to go to the jury on the first, third, and fifth counts. If there was such evidence the conviction is to stand. We are clearly of opinion that there was ample evidence, and that the conviction must stand.

*Conviction affirmed.*

## CROWN CASES RESERVED.

*Saturday, Feb. 2, 1895.*

(Before Lord RUSSELL, C.J., POLLOCK, B., WILLS, CHARLES, and LAWRENCE, JJ.)

REG. v. TOMLINSON. (a)

*Menaces—Demand of money with menaces—Threat of accusation of immorality—24 & 25 Vict. c. 96, s. 44.*

*The expression “menaces” in sect. 44 of 24 & 25 Vict. c. 96, includes threats of danger to a person by the making of accusations of misconduct against him, although the accusations are not of criminal but of immoral conduct.*

CASE stated by Lawrance, J. as follows :

William Beswick Tomlinson was tried before me at the assizes at Carnarvon on the 26th day of October, 1894, on an indictment charging him under the 44th section of 24 & 25 Vict. c. 96, with sending a letter to one John Thomas Morgan demanding money with menaces, and in a second count of the said indictment with uttering the said letter.

It was proved at the trial that the prisoner, who was in the employment of the prosecutor, was discovered by the prosecutor and his wife in the act of connection with a woman named Kate Yende, in the prosecutor's stable, in consequence of which the prosecutor discharged the prisoner from his service.

On the 25th day of June the prosecutor received the following letter in the handwriting of the prisoner by post :

(Copy).—18, Penrallt-street, Carnarvon.—On the rocks only had a day and half work since leaving Wrexham i want you to let me have 10s. so that i can get a can and Brush and if i do not get it on or before Tuesday morning i shall let Mrs. Morgan and your friends know of your doings with (Kate Yende) you must understand i am not going to suffer to hide you i have had enough of it. You are at liberty to show this to your lawyer or any one else if you like, but i shall certainly do it.—Yours, W. B. TOMLINSON.

At the close of the case for the prosecution it was contended by the counsel for the prisoner that the menaces contained in the letter were not menaces within the meaning of sect. 44 of 24 & 25 Vict. c. 96, but that such menaces must be of injury or violence to the person or property, or of accusation as contained in sects. 46 & 47 of the said statute.

I overruled the objection and left the case to the jury, who

(a) Reported by R. CUNNINGHAM GLEN, Esq., Barrister-at-Law.

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found the prisoner guilty, and I released the prisoner on his own recognisances until the determination of this case.

The question for the opinion of the Court is, whether I was right in holding that the threats contained in the letter above set out are such threats as are contemplated by sect. 44 of the above-mentioned statute.

24 & 25 Vict. c. 96, s. 44, enacts that,

Whosoever shall send, deliver, or utter, or directly or indirectly cause to be received, knowing the contents thereof, any letter or writing, demanding of any person with menaces, and without any reasonable or probable cause, any property, chattel, money, valuable security, or other valuable thing, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than three years [now under 27 & 28 Vict. c. 47, s. 2, five years] or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Lord RUSSELL, C.J.—The point is not altogether free from difficulty; and it is a matter of regret that no one is instructed to argue it. The question turns upon the construction of the 44th section of the Larceny Act, 1861. But it is necessary, in order to determine the true construction of that section, to look at certain other sections cognate to the subject treated of in that section. Now, it is enacted by sect. 44 that: [His Lordship read the section which is set out above.] Sect. 45 provides that, “Whosoever shall with menaces or by force demand any property, chattel, money, valuable security, or other valuable thing of any person with intent to steal the same, shall be guilty of felony.” And the 46th section provides that, “Whosoever shall send, deliver, or utter, or directly or indirectly cause to be received, knowing the contents thereof, any letter or writing, accusing, or threatening to accuse, any other person of any crime punishable by law with death or penal servitude for not less than seven years, or of any assault with intent to commit any rape, or of any attempt or endeavour to commit any rape, or of any infamous crime as hereinafter defined, with a view or intent in any of such cases to extort or gain by means of such letter or writing any property, &c., from any person,” shall be guilty of the offence, and subject to the punishment named in the statute. It is to be observed that the accusations to which that section relates are accusations of crime. The only other section which is material is the 49th, by which it is enacted that, “It shall be immaterial whether the menaces or threats hereinbefore mentioned be of violence, injury or accusation to be caused or made by the offender or any other person.” To come back to what is the true construction of sect. 44; and to whether the letter, of the writing and sending of which the prisoner has been found guilty, is evidence of a demanding with menaces any property, money, &c.: the point seems to have been taken by counsel for the prisoner that menaces within the meaning of that section means menaces importing a threat of injury to the person or property. In other words, menaces, or threats suggesting, if not



coupled with, injury to the person or property. It is to be observed that the very next section draws a distinction between the two classes of menaces, because it says "with menaces or by force." Therefore, it would seem that there was contemplated under the word "menaces" not merely threats of injury to the person or property, but menaces which would involve injury to a third person intended to be injured, and would induce the person to whom the menaces are addressed to part with money or valuable property. In this case we can well see how that a menace of some indecency of conduct would be a holding out of a threat of injury much more serious than if the word were confined to the class of cases suggested. It would be a matter of regret if the Court felt itself compelled to put a narrow construction upon the term. It was further suggested that sect. 49, which states that it shall be immaterial whether the menaces or threats mentioned in the previous sections be of violence, injury, or accusation to be caused or made by the offender or any other person, means violence to the person, injury to the person, or accusation in the sense in which those words are used in sect. 46, which would be, so far as the word "accusation" is concerned, accusation of crime. Upon the whole, though not without doubt, I have come to the conclusion that the word "menaces" in sect. 44 is to have a wider meaning than that suggested; and that it may well be held to include threats of danger by the making of accusations of misconduct, although that misconduct may not have amounted to a crime. I think there is some authority for that from what is given as the meaning of the word "menace" in the dictionaries. In some, as in Johnson's Dictionary, its meaning is given as merely a "threat;" but in Webster's Dictionary it is defined amongst other things as "the show of a probable evil or catastrophe." There being no definition of the precise meaning that the Legislature intended, we have to look at the ordinary and natural meaning of the word, unless that meaning is displaced by anything contained in the statute. It does not seem to me that there is anything in the statute which would authorise us to displace that meaning. I have said that there is no authority; but in the case of *Reg. v. Smith* (19 L. J. 80, M. C.; 1 Den. C. C. 510; 2 C. & K. 882), a letter was written to the effect that if a sum of money was paid an impending catastrophe would be averted; and the question was, whether this came within the earlier statute of 7 & 8 Geo. 4, c. 29, s. 8, which enactment is in point of fact reproduced in the statute on which the indictment in the present case is based. In that case Wilde, C.J. said: "Here the demand of money is accompanied by a statement that, if the money be not paid, the evil before spoken of in the letter will happen, and that evil is, that certain burglars of a most horrid gang will break into the house, burn the banker's books, and cause a stoppage of the bank. We are all of opinion that the terms of the letter amount to a distinct menace that the evil will happen unless the money is paid." There is one other case

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which is reported in Leigh's Crown Cases, at p. 288, called *Walton's case*. I refer to this case because, while stating what I conceive to be the meaning of the section, it points out what is the character of the threat before it comes within the section. There the prisoner had obtained money by threatening to execute a distress warrant, which he had no authority to do, and the jury were directed, as a matter of law, that the conduct of the prisoner constituted a menace within the statute. The Court for Crown Cases Reserved, however, quashed the conviction on the ground that it was not for the judge to do more than lay down the principle upon which the jury ought to proceed in considering whether the threat which had been used there was or was not within the statute, and that it was not for him to say as a matter of law that it did amount to a menace within the statute. The Court further held that he ought to have told the jury that the question was whether or not the threat or words used, which were said to amount to a threat, was such as would naturally unsettle the mind of the person on whom it operated, and cause him to act in a way in which he would not otherwise act. In this case no complaint is made of the summing up of the learned judge; therefore it must be assumed that that was the character of his summing up. It seems to me that there is no restriction placed by the statute upon the ordinary meaning of the term menaces in sect. 44, and that, therefore, this conviction must be affirmed.

POLLOCK, B.—I have come to the same conclusion, and have nothing to add.

WILLS, J.—I am of the same opinion. I think that the case comes within sect. 49 of the Act. I do not think that it is necessary even to rely upon that section, for I think that the injury with which a person is threatened should, in order to bring the menace within sect. 44, receive a liberal interpretation, and that it does not mean an actionable injury only, but includes any injury which is calculated to do a person harm. I also think that the accusation is certainly not to be confined to cases which come within sect. 46. What that section says is that, if the accusation takes the form of the cases stated in the section, then a larger amount of punishment is to be awarded. I think that the term "accusation" means that which in the ordinary sense of the term would amount to an accusation. I have always thought that persons who are practised upon in this way are not possessed of the ordinary powers of resisting; therefore, I think that a liberal interpretation should be put upon the words. In my opinion this conviction should be affirmed.

CHARLES, J.—I am of the same opinion. I do not think that in either sects. 45, 46, 47, or 49 are any words which would justify us in placing the restrictive meaning upon the words in sect. 44 which it is sought to place upon them.

LAWRANCE, J. concurred.

*Conviction affirmed.*

## QUEEN'S BENCH DIVISION.

*Thursday, Feb. 7, 1895.*

(Before WILLS and WRIGHT, JJ.)

SINGLETON (app.) v. ELLISON (resp.). (a)

*Brothel keeping—Meaning of “brothel”—House occupied by one woman—Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 13, sub-sect. 1.*

*A “brothel” is a place of resort for people of opposite sexes for immoral purposes, and is not a place where one woman receives men.*

**T**HIS was an appeal from justices upon a case stated by them for the opinion of the court.

An information was preferred by the appellant against the respondent that she did unlawfully keep a brothel in a certain street contrary to sect. 13, sub-sect. 1, of the Criminal Law Amendment Act, 1885. There was no evidence that the house was used by women other than the respondent, but there was evidence that the house in question was visited by men. The justices were of opinion that, in order to constitute the offence of keeping a brothel, it was necessary for the appellant to prove that the house was frequented and used for the purpose of prostitution by men and women other than the woman occupying the house, and they found that no woman other than the respondent lived, visited, frequented, or used the house in question for the purposes mentioned; they decided that the house was not a brothel within the meaning of the statute, and stated a case for the opinion of the Court.

The Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), sect. 13, sub-sect. 1, enacts that,

Any person who keeps or manages or acts or assists in the management of a brothel . . . shall, on summary conviction in manner provided by the Summary Jurisdiction Acts, be liable, &c.

*George Elliott* for the appellant.—A brothel is a house, room, or other place kept or used for the purposes of prostitution, and it does not matter whether the same be kept by the person occupying the house or by any other person. Any other construction of the meaning of a brothel would nullify the effect of the statute. The following definition is given in *Stephen's Digest of the Criminal Law*, 5th edit., art. 201: “A common bawdy-house is

(a) Reported by T. R. BRIDGWATER, Esq., Barrister-at-Law.

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a house or room or set of rooms in any house kept for the purposes of prostitution, and it is immaterial whether indecent or disorderly conduct is or is not perceptible from the outside.” He cited *R. v. Pierson* (2 Ld. Raymond, 1197); *Reg. v. Justices of Parts of Holland, Lincolnshire* (46 J. P. 312).  
*F. H. Mellor*, for the respondent, was not called upon.  
 WILLS, J.—In this case we think the justices were quite right in the decision they came to. The word “brothel” means a bawdy-house, and is well known to our law and in Acts of Parliament to be a place where people of opposite sexes resort for purposes of prostitution, and it is not a place where one woman is accustomed to receive men.

WRIGHT, J.—I agree.

*Appeal dismissed.*

Solicitors: for the appellant, *David Nimmo*, for *Herbert Lewis* and *Davies*, Liverpool; for the respondent, *Kime* and *Hammond*, for *W. and A. Blackhurst*, Preston.

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## CROWN CASES RESERVED.

Nov. 10 and 17, 1894.

(Before Lord RUSSELL, C.J., HAWKINS, CHARLES, WRIGHT, and COLLINS, JJ.)

REG. v. BROWN. (a)

*Criminal law—Gaming—Keeping premises for persons resorting thereto to bet—Nature of offence—Bets by letter or telegram—“Resorting”—Penalties—Betting House Act, 1853—Practice—Indictment for offences not charged in summary proceedings—Vexatious Indictments Acts—Points not reserved by case—Practice of Court as to sending back cases for restatement.*

*The offence created by the first portion of sect. 1 of the Betting House Act, 1853, cannot be proved by evidence of directions communicated to the keeper of the premises unaccompanied by evidence tending to show that the purpose for which the premises were kept was for the betting with persons resorting thereto in person. The offence created by the enactment being, however, the keeping open premises for the purpose of betting with persons resorting thereto, if the evidence shows that the premises were kept for such purpose it is unnecessary to prove actual personal resorting thereto on the part of any persons.*

*Per Hawkins, J. (Wright, J. dissentiente) : A person convicted of keeping open, &c., a place, contrary to sect. 1 of the Betting House Act, 1853, is not liable to more than one penalty in respect of the keeping open, &c., of such place upon any one occasion.*

*Where, upon the hearing of a summons before a Court of summary jurisdiction, the defendant is entitled under sect. 17 of the Jurisdiction Act, 1879, to claim, and does claim, to be tried by a jury, the position of matters becomes thereafter the same as if the defendant had been charged with an indictable offence and not with an offence punishable on summary conviction. In such case, therefore, if the offence charged in the summons was one of the offences to which the Vexatious Indictments Acts apply, the statute 30 & 31 Vict. c. 35 renders it lawful for the prosecution to present an indictment to the grand jury alleging a different offence to that, or containing counts alleging offences other than that, in respect of which the defendant was committed for trial, provided that such other offences are, in the opinion of the Court in or before which the indictment is preferred, justified by the evidence given before the Court of summary jurisdiction.*

(a) Reported by R. CUNNINGHAM GLEN, Esq., Barrister-at-Law.

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Restatement  
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*The Court for Crown Cases Reserved will only send a case reserved for its opinion back to be restated where anything arises which is incident to a point which is raised, and with regard to which the Court is desirous of further information. It will not do so for the purpose of raising a fresh point.*

CASE stated for the opinion of this Court by the Recorder of the borough of Plymouth as follows :—

At the Midsummer Quarter Sessions for the borough a true bill was found by the grand jury against Charles Thomas Brown for misdemeanour.

The indictment (a), after reciting that the defendant had been summoned before the magistrates, and, upon being asked, had elected to be tried by a jury, contained four counts for offences under the 1st section of the Betting House Act, 1853 (16 & 17 Vict. c. 119). Before the defendant pleaded it was objected that the indictment was bad, because each count in it alleged a different offence from that with which the defendant was charged before the magistrates, or because it contained counts for other offences than that for which the defendant was charged before

(a) A copy of the indictment was annexed to and formed part of the case, and the first and second counts of the indictment were as follows :—

“Borough of Plymouth to wit.—The jurors for our Lady the Queen upon their oath present that Charles Thomas Brown was charged before a court of summary jurisdiction, holden at the Petty Sessional Court, the Guildhall of the borough of Plymouth, in the county of Devon, on the twenty-eighth day of April, in the year of our Lord one thousand eight hundred and ninety-four, with offences, to wit, the offences hereinafter in several counts charged and stated, and did then, on appearing before the court of summary jurisdiction and before the said charges were gone into, claim to be tried by a jury.—1st Count: And the jurors aforesaid, upon their oath aforesaid, present that the said Charles Thomas Brown was the occupier of a house and rooms in the said house numbered 11, Alfred-street, in the said borough of Plymouth, and that the said Charles Thomas Brown being such occupier as aforesaid, on the seventeenth and eighteenth days of April in the year of our Lord one thousand eight hundred and ninety-four, unlawfully did open, keep, and use the said rooms in the said house for the purpose of betting with persons resorting thereto, to the great damage and common nuisance of all the liege subjects of our Lady the Queen there inhabiting, being, residing, and passing, to the evil example of all others in like case offending against the form of the statute in such case made and provided, and against the peace of our Lady the Queen, her crown and dignity.—2nd Count: And the jurors aforesaid, upon their oath aforesaid, do further present that the said Charles Thomas Brown was the occupier of a house and rooms in the said house, to wit, a house numbered 11, Alfred-street, in the said borough of Plymouth, and that he, the said Charles Thomas Brown, being such occupier as aforesaid, on the seventeenth and eighteenth days of April, in the year of our Lord one thousand eight hundred and ninety-four, unlawfully did open, keep, and use the said rooms in the said house for the purpose of money being received by and on behalf of him the said Charles Thomas Brown, then being the said person occupying the said house as aforesaid, as and for the consideration for an undertaking, promise, and agreement to pay thereafter money on the contingency of and relating to horse races, to the great damage and common nuisance of all the liege subjects of our Lady the Queen, there inhabiting, being, residing, and passing, to the evil example of all others in like case offending, against the form of the statute in such case made and provided, and against the peace of our Lady the Queen, her crown and dignity.”

The indictment contained two other counts, alleging that the defendant, being a person using the premises in question, unlawfully opened, kept, and used them for the same purposes as alleged in the previous counts upon the same dates as therein mentioned.

the magistrates. It was proved that the defendant was summoned before the magistrates. (a)

The defendant having appeared to the summons, was asked by the magistrates if he wished to be tried by a jury, and he elected to be so tried. The magistrates proceeded to hear the evidence on the charge. The charge in the depositions was stated as follows:

That he the said Charles Thomas Brown on the 17th and 18th days of April, 1894, at the borough of Plymouth aforesaid, being then occupier of a certain house situate at No. 11, Alfred-street, there unlawfully did use the said house for the purpose of betting with persons resorting thereto upon certain events and contingencies of and relating to certain horse races, contrary to the statute in that case made and provided, and against the peace of our Lady the Queen, her crown and dignity.

The evidence then taken before the magistrates was sufficient to support all four counts in the indictment. I held that the indictment was good, but agreed to state a case for the opinion of the Court for Crown Cases Reserved.

The defendant then pleaded not guilty, and was tried before me. It was proved that the defendant was then occupier of the house 11, Alfred-street, Plymouth, and that he used the house for the purpose of betting with any persons who wrote or telegraphed to him asking him to bet with them. It was also proved that he used the house for the purpose of money being received on his behalf as and for the consideration for an agreement to pay thereafter money on the event of a horse race. There was no evidence that any person had actually gone to the house for the purpose of betting with the defendant, other than those who had gone to pay money under the circumstances described in the second count of the indictment. It was objected that there was no evidence of the defendant having betted with persons resorting to the house. I directed the jury that it was not necessary for a conviction under the first count of this indictment that the defendant's house should have been used for the purpose of betting with persons who physically came to the house, but that, if the house was used by the defendant as an office to which any persons who wished to bet with him were to send their communications, and if persons were in the habit of sending letters and telegrams to him there directing him to make bets with them, such persons resorted to the house within the meaning of the Act,

(a) A copy of the summons was also annexed to and formed part of the case, and was as follows:—

"In the Borough of Plymouth.—To Charles Thomas Brown, of 11, Alfred-street.—Information has been laid this day by Joseph Davidson Sowerby, for that you, on the 17th and 18th days of April, 1894, at the borough aforesaid, being then occupier of a certain house situate at 11, Alfred-street, there unlawfully did use the said house for the purpose of betting with persons resorting thereto upon certain events and contingencies of and relating to certain horse races, contrary to the form of statute in such case made and provided.

"You are therefore hereby summoned to appear before the court of summary jurisdiction, sitting in the Petty Sessional Court-house at the Guildhall in the said borough of Plymouth, on Friday, the 27th day of April, at the hour of eleven in the forenoon, to answer to the said information.—Dated the 21st day of April, 1894.—(Signed) F. E. ANTHONY, Justice of the Peace for the borough aforesaid."

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and the jury might find the defendant guilty of using the house for betting with persons resorting thereto, and I directed the jury to give their verdict separately upon the first and second counts.

The jury found the defendant guilty upon the first count, and also upon the second count. I sentenced the defendant to a fine of 300*l.* on the first count, and to a fine of 100*l.* on the second count, and I respited the judgment till the case to be stated by me should be heard by the Court for Crown Cases Reserved, or till the 1st day of January, 1895, whichever should first happen. It was objected on behalf of the defendant that I had no jurisdiction to sentence the defendant to a greater fine than 100*l.*, or to more than one penalty. The questions for the Court are: 1. Whether the indictment was bad for not alleging the same offence as that in respect of which the defendant had claimed to be tried by a jury; or for containing more than one count; or for containing a count differing from the charge upon which the defendant had been brought before the magistrates. 2. Whether the defendant could be guilty of using his house for betting with persons resorting thereto, although such persons only sent letters and telegrams to the house, and did not personally come there. Whether I had jurisdiction to fine the defendant more than one penalty of 100*l.*

If the Court shall answer the first question in the affirmative, the judgment is to be reversed and the defendant acquitted.

If the Court shall answer the first question in the negative, and either the second or third question also in the negative, the defendant is to be acquitted on the first count, and judgment is to stand upon the second count that the defendant be fined 100*l.*

The Betting Houses Act, 1853 (16 & 17 Vict. c. 119), s. 1, enacts that:

No house, office, room, or other place shall be opened, kept, or used for the purpose of the owner, occupier, or keeper thereof, or any person using the same, or any person procured or employed by, or acting for or on behalf of such owner, occupier, or keeper or person using the same, or of any person having the care or management or in any manner conducting the business thereof, betting with persons resorting thereto; or for the purpose of any money or valuable thing being received by or on behalf of such owner, occupier, keeper, or person as aforesaid, as or for the consideration for any assurance, undertaking, promise, or agreement, express or implied, to pay or give thereafter any money or valuable thing on any event or contingency of or relating to any horse race or other race, fight, game, sport, or exercise, or as or for the consideration for securing the paying or giving by some other person of any money or valuable thing on any such event or contingency as aforesaid, and every house, office, room, or other place opened, kept, or used for the purposes aforesaid, or any of them, is hereby declared to be a common nuisance, and contrary to law.

*O. F. Gill* (with him *H. E. Duke*), on behalf of the defendant, submitted, in the first place, that the jury had been misdirected with regard to the meaning of the word "resorting" in sect. 1 of 16 & 17 Vict. c. 119, which in its plain and ordinary sense meant a physical resorting of persons intending to bet, and could not be satisfied by mere correspondence; and cited the rule of construction stated by Lord Esher, M.R. in *The Hornsey Local*

*Board v. The Monarch Investment Building Society* (61 L. T. Rep. 867; 24 Q. B. Div. 5). There was nothing in the context of the section which required any other than the ordinary meaning to be placed upon the word, and as the latter part of the section dealt with that which did not require a physical resorting, there was nothing which made it desirable to place a meaning other than the ordinary one upon the word. In *Clark v. Wright* (34 J. P. 661) the word was dealt with incidentally, and also in *Reg. v. Preedy* (17 Cox C. C. 438). The construction contended for by the prosecution would include a person who might have sent someone else to a place, but had never been there himself. With regard to the point as to the defendant not having been summoned for the whole of the offences charged in the indictment, he submitted the second count was bad, because the preliminary steps necessary to justify it had not been taken, that when before the magistrates, the defendant was charged with a different offence, which was punishable summarily, and only one offence could, by reason of 11 & 12 Vict. c. 43, s. 10, be charged in one complaint or information. The Vexatious Indictments Act was passed expressly to prevent a person being indicted for the offences charged amongst others without the preliminary investigation before a court of summary jurisdiction having taken place. Here the defendant had elected to be tried for the offence for which he was summoned, and for that only. [A further point was submitted, that the opinion of the learned Recorder had not been taken, as required by 31 Vict. c. 35, s. 1, before the indictment had been sent up to the grand jury, upon whether the counts in the indictment charging offences other than that charged in the summons were justified by the evidence before the magistrates. But the Court was of opinion, as the point was not raised by the case, that it was not open to the defendant to take it. Upon counsel thereupon applying to have the case sent back in order that it might be restated:]

Lord RUSSELL, C. J. said:—It is not according to the practice of the Court to do so. If anything arises which is incident to a point which is raised, and the Court is desirous of further information, the Court will send the case back; but that is not the case here, and the Court will not send the case back for the raising of a fresh point.

*Poland*, Q. C. (with him *J. A. Thorne* and *F. Bodilly*) submitted, on behalf of the prosecution, that the defendant having elected to be tried by a jury under sect. 17 of the Summary Jurisdiction Act, 1879, the subsequent proceedings were to be taken as if he was charged with an indictable offence; and that, inasmuch as the depositions disclosed other offences besides that in respect of which the defendant was summoned before the magistrate, such offences could be included in the indictment. The proceedings were therefore regular, the point not being open to the defendant that leave had not been obtained before the additional counts were sent up to the grand jury. If the defendant had been taken

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by surprise he should have applied for a postponement of the trial, but this was not done. Further, the indictment charged an offence which, under sect. 1 of the Betting Houses Act, 1853, was a common nuisance, and an indictment for a common nuisance was not within the Vexatious Indictments Acts. [He was stopped by the Court upon this point.] With regard to the point as to resorting, it was admitted that, under the second part of sect. 1 of the Act of 1853, physical resorting was not necessary to constitute the offence, and in *Clark v. Wright (ubi sup.)* it was expressly found that no persons did resort in that case. Physical resorting was not necessary under the first portion of the section either, for when the object of the Act was looked at the word meant "have recourse to," and this could be done by messenger, post, telegraph, or telephone.

*Our. adv. vult.*

LORD RUSSELL, C.J.—In this case the matter comes before the Court upon a case stated by the learned Recorder of Plymouth, and the facts are these: The defendant Brown was charged before certain of the justices of the borough of Plymouth under the Betting Houses Act, 1853 (16 & 17 Vict. c. 119, s. 1), for that he being the occupier of a certain house situate in the borough, "there unlawfully did use the said house for the purpose of betting with persons resorting thereto upon certain events and contingencies of and relating to certain horse races, contrary to the form of the statute." He appeared in answer to that summons before the magistrates, and upon so appearing he was rightly informed by the magistrates that, under the Summary Jurisdiction Act, 1879, having regard to the nature of the offence with which he was charged, he had a right under sect. 17 of the statute to elect to be tried by a jury instead of being dealt with summarily by the magistrates, and, upon being informed of this right, he thereupon elected not to be dealt with summarily, but to be tried by a jury before the quarter sessions. The case then came on before the recorder at the borough sessions, and evidence was then given sufficient to establish in the opinion of the recorder, by whose opinion in the matter we are bound, not only that the defendant had kept open and used the house for the purpose of betting with persons resorting thereto, but also that he had kept or used it for the purpose of money being received by him as upon an assurance of paying money on the contingency of horse-racing, those being the offences created by the first and second divisions of the 1st section of the Betting Houses Act, upon which the prosecution proceeded. The indictment in the first and second counts, and alternatively in the third and fourth counts, charged offences in those two aspects; the first charging that the defendant kept and used rooms in the house for the purpose of betting with persons resorting thereto so as to be a nuisance; and the second charged him with having opened, kept, and used the rooms for the purpose of money being received by and on his behalf as and for the consideration for an undertaking to pay

thereafter money on the contingency of horse races. At the commencement of the trial, and before evidence was gone into, objection was taken by the learned counsel who appeared for the defendant, that the indictment was bad, because it contained other and different charges from the charge which the defendant had been brought before the magistrates to meet, and upon which he had elected to be tried; and one of the questions we are here to decide is, whether or not that objection was a good one. The case then proceeded, and evidence was given, which, in the opinion of the recorder—and I see no reason for doubting the correctness of his opinion—was sufficient to support the charge under each of those counts. In the course of his summing up of the case to the jury, however, the recorder directed them that it was not necessary for a conviction under the first count that the defendant's house should have been used for the purpose of betting with persons who physically came to the house, but that it was enough to prove that he, having opened the house, had received letters or telegrams there relating to betting; and the second question raised by the case is, whether that direction was right or wrong. If wrong, then the question arises whether the conviction on the first count can stand. It was further contended, and the point is raised, that under the circumstances there was no power in the learned recorder to impose what is erroneously called more than one "penalty" in respect of one and the same occasion. The term "penalty" has really no application to the punishment imposed where the matter is treated as an indictable offence, and there has been a conviction after trial by jury. In such case the jurisdiction of the Court is to award such fine or imprisonment as it thinks fit, whereas "penalty" is a term applicable to the punishment fixed by the statute in the absence of the defendant electing to be tried before a jury. Now, I will take the questions raised in the order in which I have stated them. The first relates to charges other and different from that charged in the summons being included in the indictment. I do not stop to consider whether in fact the indictment did include other and different charges. It is quite clear that the charges which are contained in the indictment are cognate with those in respect of which the defendant was brought before the magistrates. It seems to me that, when the case arises, the question may require to be very seriously considered whether when the whole of the section is looked at more than one offence is created by it. But that question does not arise here; and we think that there is no valid objection to the inclusion in an indictment of charges other and different from those in respect of which the defendant was brought before justices. There seems to me to have been a confusion made between the course of proceeding enjoined by the statute where summary proceedings are followed, and where the magistrates are not exercising their summary jurisdiction, but are merely exercising jurisdiction with a view to sending the case

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to trial before another tribunal. It is clear that, under 11 & 12 Vict. c. 43, a person can only be charged with one offence, and that more than one charge cannot be covered by the same summons. The magistrates can authorise the issue of a fresh summons where it is desired to charge another offence, or if the evidence discloses fresh charges. In the latter case the magistrates can give time by adjournment to enable the defendant to meet the fresh charges. But where the magistrates are not dealing summarily with the case, but are merely putting it in trim to be dealt with elsewhere, the matter comes under a different set of provisions; for instance, by sect. 25 of the Indictable Offences Act, 1848, it is provided that when all the evidence offered upon the part of the prosecution against the accused party shall have been heard, if the justices are of opinion that such evidence is not sufficient to put the accused party upon his trial for any indictable offence they shall forthwith order his discharge; but if in their opinion the evidence is sufficient to put him upon his trial for an indictable offence they shall commit him for trial. The difference between the two cases is obvious. In the one the magistrates are called on to deal with the case forthwith in the exercise of their summary jurisdiction, and consider the punishment to be inflicted if necessary. In the other case, where the defendant is sent for trial before another tribunal, he will have ample notice of the offence or offences with which he is to be charged, and therefore it is that, in cases in which the magistrates send the case for trial before a jury, the real question is, whether the evidence given before the magistrates in support of the summons covers the particular charges which are made by the indictment. It is, in fact, a common practice for judges at assizes and chairmen at quarter sessions to send up to the grand jury fresh counts which have been founded upon the evidence contained in the depositions. It is further to be observed that, were it not for the provisions of the Vexatious Indictments Act, the offence or offences for which the defendant was indicted, being a common nuisance, could have been charged against him without any preliminary proceedings at all, and by the mere act of sending up an indictment to the grand jury. That Act, however, includes amongst the offences for which no indictment may be sent up to the grand jury as of right the offence of keeping a gambling house, and prohibits the preferment of any such indictment without the authorisation specified in the 1st section. The prohibition contained in that Act was, however, to a certain extent abrogated by 30 & 31 Vict. c. 35, sect. 1 of which seems absolutely to preclude this question from arising, for, after reciting that, "Whereas it is found that delay and inconvenience are frequently caused by the provisions contained in the first section of the Act (22 & 23 Vict. c. 17), in cases not within the mischief for remedy whereof the same was made and passed," it enacts that the said provisions of the said first section of the said Act, shall not prevent the presentment to or finding by a grand



jury of any bill of indictment containing a count or counts for any of the offences mentioned in the said Act, if such count or counts be founded, in the opinion of the court in or before which the same bill of indictment be preferred, upon the facts or evidence disclosed in any examinations or depositions taken before a justice of the peace in the presence of the person accused, or proposed to be accused, by such bill of indictment. It seems, therefore, clear that it was perfectly legal and regular, even assuming that here the counts of the indictment did contain other and different charges to those in respect of which the defendant was summoned—which, however, I do not say the indictment in this case did—to include these counts in the indictment. The first objection, therefore, fails. The second objection was, that the learned recorder directed the jury that the offence charged in the first count, namely, that the house was kept open and used for purposes of betting with persons resorting thereto, could be established by evidence of letters or telegrams being sent to the house, although the persons who sent them did not actually or physically resort to the house themselves to bet. I cannot but think that upon this part of the case the learned recorder was guilty of some misconception of the real intention of the Act. The gist of the offence was the keeping open a house for the purpose of betting with persons resorting thereto. It is the purpose for which the place is opened and kept that has to be looked to, and if for instance a person opens a place and publishes by means of advertisements that he is ready to bet with persons resorting thereto, that would be ample evidence of the place being kept open for purposes prohibited by the statute, even though no evidence was forthcoming of any person having in fact resorted to such place. But that is not all, and here again I say, with deference to the learned recorder, he has been under a misapprehension as to the nature of the offence, for he says: "There was no evidence that any person had actually gone to the house for the purpose of betting with the defendant other than those who had gone to pay money under the circumstances described in the second count of the indictment." That is to say, other than those who went to pay money in doing that which is briefly described as "ready-money betting." I think that the whole of the Court are most clearly of opinion that there could be no stronger evidence of a resorting to the place for the purpose of betting than evidence of that kind. However, what we have to consider is, was that evidence left to the jury? It is clear, to my mind, that the jury were not asked to pass any judgment at all upon that body of important evidence contained in the words which I have just read, namely, that no person had gone to the house for the purpose of betting with the defendant other than those who had gone to pay money under the circumstances described in the second count of the indictment. I think that is clear, for, as I read the case further, I find that "it was objected that there was no

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evidence of the defendant having betted with persons resorting to the house. I directed the jury that it was not necessary for a conviction, under the first count of this indictment, that the defendant's house should have been used for the purpose of betting with persons who physically came to the house :'' If the direction had stopped there, the direction would have been perfectly sound, because the fact that the house had been kept open for the purpose of betting with persons resorting thereto might be proved in many other ways than by evidence of persons physically resorting thereto, as I have pointed out. But that was not the view which was left to the jury, because the learned recorder went on to say, ''but that if the house was used by the defendant as an office to which any persons who wished to bet with him were to send their communications, and if persons were in the habit of sending letters and telegrams to him there directing him to make bets with them, such persons resorted to the house within the meaning of the Act.'' I am still on the first count. That, therefore, is a direction to the jury that you may prove that a place has been kept open for the purpose of betting with persons resorting thereto by proof merely that persons who desired to bet with the defendant sent letters to him at such place. It therefore follows, if I am right in saying, as I think I clearly am, that the jury were not asked to give their verdict on this count upon any other evidence than that referred to in the direction of the learned recorder, that if that direction was right the conviction on the first count ought to stand, while if it was wrong it ought not to stand. Now, is that direction right. In my judgment it is clearly wrong. The word used in the Act is ''resort,'' which we must assume, the Legislature not having put any special meaning upon the word, was intended to be used in the ordinary and usual sense of ''to go,'' ''to frequent,'' ''to go in and out.'' I put a case in the course of the argument which illustrates that it must be a physical resorting. I put the case of a man in Paris writing three letters making bets, one to a betting house in Birmingham, one to a house in London, and one to a house elsewhere at the same time. Could it be said that that person was resorting at one and the same time to each of those places, although he had never and might never in the course of his life set foot in any of them? It is suggested that to place a narrow construction on the enactment would to a great extent defeat the object of the Act. But, even if that would be the effect, we ought to construe the Act as we think it ought to be construed. An illustration has been put of persons sending messengers to places to make bets for them instead of going themselves; and I should be sorry to have it thought that I am of opinion that that would not be within the mischief of the 1st section of the Act. The second portion of the section deals with the case of places being kept open for ready-money betting, and I should be sorry to think, and I do not think, that anything I have said in any way renders nugatory

the provisions of the Act. But it is to be borne in mind that, while the law does not sanction and refuses its aid to the carrying out of any transactions of a gambling description, the law has nowhere made all betting criminal, but merely makes it criminal where it is carried on under the conditions mentioned in the section. The result is, that so far as the conviction upon the first count of the indictment is concerned the conviction cannot stand, because the jury were directed to find a verdict of guilty upon that which I have pointed out was a clear misdirection on the part of the learned recorder. The conviction on the first count of the indictment must therefore be quashed, and the punishment and fine awarded by the learned recorder in respect of that conviction must necessarily drop with the count, it having been quashed. The jury having found separate verdicts, however, upon the first and second counts, as they were very properly asked to do by the learned recorder, and there having been ample evidence to support the charge contained in the second count, it follows that the conviction upon that count will stand. The third point was, that there was no power on the part of the court to inflict a double fine. As the case now stands, however, that question does not arise, the fine under the first count falling with the quashing of the count, and there being therefore only one fine imposed. I have already said that, upon that question, much may be said when the time comes for it to be argued. But it is not necessary to consider it in the present case. The result is, that the conviction on the first count of the indictment must be quashed, while the conviction on the second count will stand. I have only to add, that my learned brother Charles concurs with me in the judgment I have delivered.

HAWKINS, J.—I so entirely concur in everything that my Lord has said in his judgment in this case, that I purpose only to add a few observations. Now, the statute itself is somewhat inartistically drawn. The first paragraph of the 1st section makes it a common nuisance for any house to be kept open or used for the purpose of the occupier betting with persons resorting thereto, the last paragraph of the section enacting that “every house, office, room, or other place opened, kept, or used for the purposes aforesaid, or any of them, is hereby declared to be a common nuisance and contrary to law. In my judgment an indictment might have been framed upon that, by a count simply alleging that the defendant had kept a house and used a house within the meaning of that section so as to amount to a common nuisance; and in support of that indictment it would have been competent for the prosecution to have offered all the evidence that has been offered in support of the present indictment. The first count of the present indictment, however, alleges that the defendant was the occupier of a house and rooms in the said house, to wit, a house numbered 15, Queen-street, in the borough of Plymouth, and that he, being such occupier on the 24th day of February, 1894, and on divers other days and

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times between that day and the taking of the inquisition, unlawfully did open and use the said rooms for the purpose of betting with persons resorting thereto. That is the subject of the first count, and that is alleged to have been done to the great damage and common nuisance of all the liege subjects of our Lady the Queen. The second count alleges that the house was kept open and used for the purpose of money being received by and on behalf of the defendant as and for the consideration for an undertaking, promise, and agreement to pay thereafter moneys on the contingency of and relating to horse races. Now, those two counts together to my mind make but one offence, that is, assuming that those things alleged to have been done were done upon the same day. For it seems to me that to fine a man upon the first count and also upon the second was an improper thing to do, because there was but one offence; and it cannot be said, I think, that it was ever intended by the Legislature that for every single act which was done, whether in keeping the house open for betting with persons resorting thereto, or for receiving money on the contingency of horse races, there should be a separate offence. The language of the statute seems to me to show that a house kept open for any of the purposes mentioned in the section is a common nuisance. I am therefore inclined to think that two fines could not have been inflicted, it being admitted that those two alleged offences were committed upon one day. In order to avoid an indictment being drawn in this form again, I would point out that it does seem to me to be a little irregular to join two offences in the same count as I see has been done here; for instance, to allege that an offence was committed on the 15th and also on the 18th. Now, with regard to the first count, I have come to the conclusion, after a great deal of consideration, that the direction of the learned recorder to the jury upon that count was wrong. He says in the case: "I directed the jury that it was not necessary for a conviction under the first count of the indictment that the defendant's house should have been used for the purpose of betting with persons who physically came to the house; but that, if persons were in the habit of sending letters and telegrams directing him to make bets with them, such persons resorted to the house within the meaning of the Act, and they might find the defendant guilty of using the house for betting with persons resorting thereto." Confining that to the first count I think the direction was wrong. I think that the word "resorting"—although I confess I was a little struck with the argument of Mr. Poland, and for a moment thought that it was just barely possible that the word might be satisfied by persons having recourse to that house—cannot be satisfied except by persons having physical resort to the house. I think, therefore, that upon the first count judgment ought to be given for the defendant on the ground that the learned recorder was wrong in telling the jury that it was not necessary that the house should have been

used for betting with persons who physically came to it, and that they could convict on the first count if persons were in the habit of sending letters and telegrams, directing the defendant to make bets with them. So much for the first count. I now come to the second count, and that and the third and fourth counts seem to me merely to be ringing the changes upon the evidence which was before the magistrates when the charge was made. It is said that those counts are bad because they allege offences other than that with which the defendant was charged when before the magistrates. Now, upon the face of it, the indictment is perfectly good, and no objection is made to it before us, the question raised being whether any of these counts were legally joined because it is said they could not by law be joined, or rather under the Vexatious Indictments Act should not have been joined. It seems to me we must treat this as if it were originally an indictable offence. And the 1st section of the Vexatious Indictments Act of 1867 deals with the matter and makes it very clear, for it says that the provisions of the 1st section of 22 & 23 Vict. c. 17, shall not extend to prevent the presentment to or finding by a grand jury of any bill of indictment containing a count or counts for any of the offences mentioned in the Act, if such count or counts be such as may be lawfully joined with the rest of such bill, and if the same count or counts be founded (in the opinion of the court in or before which the same bill of indictment be preferred) upon the facts or evidence disclosed in any examinations or depositions taken before a justice of the peace in the presence of the person accused, or proposed to be accused, by such bill of indictment. Now, of course, it being an indictable offence—and the moment the defendant claims to be tried by a jury it becomes an indictable offence to all intent and purposes—it seems to me that the offences charged come within the Vexatious Indictments Acts without doubt. There does not appear to have been any mention of the Act before the learned recorder, but assuming that objection had been raised, the statute 30 & 31 Vict. c. 35 would have given full and ample authority to the Court to add counts, if in the opinion of the recorder there was evidence before the magistrates to justify such counts being added. Here, upon the statement of the case, the learned recorder has stated that he did find, as a matter of fact, that the evidence was sufficient to authorise those counts, and he having found that, and it being a matter for him in his discretion, we cannot interfere with it. Therefore that objection fails. Having come to the conclusion, however, that the first count fails by reason of the misdirection of the learned recorder, that must be set aside, and the second count seems to me in itself to be unobjectionable. I therefore agree with my Lord that the conviction upon the first count must be quashed, while the conviction on the second count must be affirmed.

WRIGHT, J.—I agree with the judgment of my Lord. I confess I do not share in the opinion that has been expressed by my

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brother Hawkins that there could not be two offences on the same day ; because, in my opinion, the Act makes the acts mentioned in the first and second portions of sect. 1 two separate and distinct offences.

COLLINS, J.—I agree with my Lord. I express no opinion on the other point

BRUCE, J.—I agree with my Lord.

*Conviction on the first count quashed, and conviction on the second count affirmed.*

Solicitors for the prosecution, Church, Bendall, and Todd, for Trehane, of Plymouth.

Solicitors for the defendant, Law and Worssam, for Bond, Pearce, and Bickle, of Plymouth.

## QUEEN'S BENCH DIVISION.

*Tuesday, Jan. 29, 1895.*

(Before WILLS and WRIGHT, JJ.)

REG. v. HUGGINS AND ANOTHER (Justices of Gravesend) ; *Ex parte* CLANCY. (a)

*Justice of the peace—Interest disqualifying—Bias—Justice belonging to privileged class for whose benefit proceedings are taken—Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), s. 361.*

*C., an unlicensed pilot, was convicted by a Court of summary jurisdiction under sect. 361 of the Merchant Shipping Act, 1854, of having continued in charge of a ship after a qualified pilot had offered to take charge of her. M., one of the six justices who sat to hear and determine the case, was a duly qualified pilot and licensed for the same pilotage district, but for more than forty years he had been a "choice" pilot, that is, a pilot chosen and engaged beforehand by shipowners, and for the last nineteen years he had been, and was at the date of the conviction, in the service of a large steamship company, who were entitled to his exclusive services, and who never employed unlicensed pilots :*

(a) Reported by W. W. ORR, Esq., Barrister-at-Law.



*Held, that, as M. belonged to a small class of privileged persons for whose protection the proceedings were taken, there was such a reasonable apprehension of bias as to disqualify him from sitting, and that therefore the conviction was bad.*

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**R**ULE calling on Henry Huggins and another, justices of the peace for the borough of Gravesend, and William Larkins, to show cause why a writ of *certiorari* should not issue for the removal of a conviction of Thomas James Clancy, for assuming and continuing in the charge of a ship as an unqualified pilot after a qualified pilot (the said William Larkins) had offered to take charge of her, and why the conviction should not be quashed on the ground that Thomas Martin had an interest in the subject-matter of the conviction.

At a court of petty sessions held on the 10th day of October, 1894, in and for the borough of Gravesend, Thomas James Clancy was summoned by William Larkins, for that he on the river Thames, then being an unqualified pilot, did unlawfully assume and continue in charge of a certain ship after the said William Larkins, a duly qualified pilot, had to his knowledge offered to take charge of her.

Six justices sat to hear and determine the case, and Clancy was convicted. After his conviction it came to his knowledge that one of the justices—Mr. Thomas Martin, who resided at Gravesend—was a pilot duly licensed by the Trinity House to take ships down the Thames to Gravesend, and also from Gravesend to the sea, and that at the time of the hearing and determination of the said summons against him, Mr. Martin was a duly qualified pilot, actively engaged as a pilot at Gravesend and in the London pilotage district.

The present rule for a *certiorari* was then obtained at the instance of Mr. Clancy, upon the grounds that Mr. Martin, being a licensed pilot, was in competition with unlicensed pilots, and therefore had a pecuniary interest in the result of the conviction and a substantial bias against the accused, and so was disqualified from sitting to hear and determine the case.

In an affidavit filed by Mr. Martin, he said that he never had, and has not now any interest whatever in the conviction of Clancy; that although he is a duly licensed Trinity House pilot, he does not in any way compete with Clancy, or any other unlicensed pilot; that the only licensed pilots who in any way compete with Clancy are those licensed pilots who take “turns” at a pilot station, and that he does not and never has taken any part in the “turn” system; that for forty-three years he has been a licensed “choice” pilot (that is, a pilot chosen and regularly engaged beforehand by ship owners to pilot their ships); that for nineteen years last past he has acted as a “choice” pilot for the Peninsular and Oriental Steam Navigation Company only; that for five years last past he has acted as pilot on the outward voyages only of the ships of the said company; that he goes on board the said ships at Gravesend on the days



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appointed for sailing, and his licence entitles him to pilot the said ships as far as the Isle of Wight; that the ships of the said company never employ unlicensed pilots, but employ "choice" licensed pilots only, and that Mr. Clancy could not therefore compete with him in his employment as pilot of the ships of the company; that under the terms of his engagement with the company, the company are exclusively entitled to his services as pilot, and that he is not entitled to offer his services as pilot to any other employer so long as his engagement continues, and that therefore he cannot compete with Mr. Clancy in acting as pilot of ships other than those of the company; that in becoming party to the said conviction he was not in any way influenced by favour or prejudice for or against the accused or the class of pilots of which he is one, but acted solely on the evidence before him, and that the justices were unanimous in convicting Mr. Clancy.

The Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), provides :

Sect. 360. A qualified pilot may supersede an unqualified pilot, but it shall be lawful for the master to pay to such unqualified pilot a proportionate sum for his services, and to deduct the same from the charge of the qualified pilot.

Sect. 361. An unqualified pilot assuming or continuing in the charge of any ship after a qualified pilot has offered to take charge of her, or using a licence which he is not entitled to use for the purpose of making himself appear to be a qualified pilot, shall for each offence incur a penalty not exceeding fifty pounds.

Sect. 362. An unqualified pilot may, within any pilotage district, without subjecting himself or his employer to any penalty, take charge of a ship as pilot under the following circumstances; that is to say, when no qualified pilot has offered to take charge of such ship, or made a signal for that purpose, &c.

*Poland, Q.C. and R. D. Muir* for Larkins, showed cause.—Mr. Clancy was an unlicensed pilot, and as he had continued in charge of the ship after the prosecutor in the action, a qualified pilot, had offered to take charge of her, he had undoubtedly committed an offence under sect. 361. It is said here that Mr. Martin, being a qualified pilot, was in competition with the class of unlicensed pilots, and therefore with Clancy, and that he was in consequence disqualified from sitting as having an interest in the result. There are three classes of cases where a person has been held disqualified from acting as a judge, namely, where he acts as prosecutor and judge; where he has a pecuniary interest in the result of the proceedings; and where he has such a substantial bias as would prevent him from acting as an impartial judge. A person then, to be free from disqualification, must not act as prosecutor and judge, must have no pecuniary interest in the result, and must have no substantial bias: (*Reg. v. Handsley and others*, 8 Q. B. Div. 383.) [WRIGHT, J.—Actual bias is not necessary.] There must be a substantial bias; the mere possibility of bias will not be sufficient to disqualify: (*Reg. v. Myers and others*, 34 L. T. Rep. 247; 1 Q. B. Div. 173.) [WILLS, J.—'This person had a legal right to go and compete with the accused if he chose, and had he not therefore an interest

in the result?] The substance is that he had not the smallest personal interest of any kind in the matter. He says he is in the permanent and sole employment of this company, and therefore he could have no interest as a competitor with Clancy. The cases on the point are collected in *Reg. v. Handsley* (*ubi sup.*), and the present case does not fall within the rule laid down in that case. In the case of *Reg. v. Allen and others* (33 L. J. 98, M.C.), the point was considered as to disqualification by reason of justices having a direct interest in the matter, and the case of *Ex parte Pettitmangin*, referred to in a note to that case (at p. 99), is in favour of our contention, as there the Court refused a rule for a *certiorari* to quash a conviction by two justices, one of whom was a member of a watch committee which had given instructions for the prosecution. So the judgments of Cotton and Bowen, L.JJ., in the case of *Leeson v. The General Council of Medical Education and Registration* (61 L. T. Rep. 849; 43 Ch. Div. 366), showed that there was no disqualification here. There are numerous cases, such as prosecutions for cruelty to animals, where the justices may be interested in the result, and yet no disqualification. It is not enough merely to connect the justices with the prosecution in some form or other; and this is quite consistent with the decision in *Reg. v. The London County Council; Ex parte Akkersdyk* [66 L. T. Rep. 168; (1892) 1 Q. B. 190.] There is no case exactly like the present, and if this conviction were quashed the decision would go beyond any case yet decided. Clancy was no more a competitor than a pilot acting for any other port, and even if Martin's engagement with the Peninsular and Oriental Company were terminated, Clancy could not compete with him in his employment as pilot, and therefore Martin could have no pecuniary interest whatever in the result.

*R. W. Burnie* in support of the rule relied upon both grounds of the rule, and submitted that Mr. Martin was disqualified both on the ground of pecuniary interest, and on the ground of bias. He had a pecuniary interest in the result of this particular conviction, *i.e.*, in the subject-matter of the conviction. [WRIGHT, J.—There was no pecuniary interest.] He had a pecuniary interest to this extent that, at any moment he might become a pilot competing with unqualified pilots, and the cases showed that the very slightest pecuniary interest, however small, is sufficient to disqualify. On the second ground of the rule, he submitted that there was a likelihood of real, substantial bias, although no bias might in fact have existed, inasmuch as the qualified pilots at Gravesend were a small class, and by the rules of the Trinity House, if a person has not offered his services before a certain age he cannot become a qualified pilot, although he may continue to act after that age if he be already qualified. The class is therefore limited, and selected not by open competition, but in that limited way. It is not illegal to be an unqualified pilot, and in fact in certain cases the section under which Clancy was con-

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victed (sect. 361) allows an unqualified pilot to take charge of a compulsory ship, and as a fact an unqualified pilot is preferred by masters of ships, and consequently the qualified pilot comes into direct competition with the unqualified pilot. He would come into the keenest competition with that class to which Clancy belongs, namely, unqualified pilots. Apart from the question of pecuniary interest, he submitted that this is a case where we have on the one hand an unqualified pilot legally entitled to take charge of ships, and on the other hand the limited class of qualified pilots to which Mr. Martin belongs, and it is therefore a clear case of a real probability of bias.

WILLS, J.—This is a case of some difficulty, because, as in all such cases, it is difficult to keep separate the different questions of interest, bias, and the risk of bias. Undoubtedly in some of the decisions on this subject there has been confusion in the terms used in cases where the disqualification is pecuniary interest, and in cases where the disqualification is bias. Again, there are other cases where the objection was not so much on the ground of bias, as on the ground that the same person cannot act as prosecutor and judge. There have been other cases in which the tribunal giving the decision was not properly speaking a judicial body, but was acting in such a way that, although it was not a judicial body, its proceedings were contrary to natural justice, and upon that ground the decision was not allowed to stand. In each one of these qualifying circumstances the considerations are not identical, and unless this is clearly kept in mind we may be led astray by expressions perfectly right with regard to certain states of facts, but incorrect with regard to such a case as this. Now in this case the facts which seem to be important are those relating to the question of bias, because the point as to pecuniary interest is out of the question. The point, then, we have to decide is whether there was bias, that is, actual bias, or a reasonable risk of bias—such a reasonable apprehension of bias as a man might justly entertain; and we have also to consider what the result would be in the future if similar things were allowed to be done in similar circumstances. I do not myself for a moment attribute to Mr. Martin that he was subject to actual bias. There are no facts stated in the affidavits upon which we could come to that conclusion. But at the same time he does belong to a small class of privileged persons for whose protection against unlicensed pilots these proceedings were taken. That seems to me to be the important point here, namely, that Mr. Martin belongs to a small class of privileged persons whose privileges were being interfered with by Clancy. I cannot help thinking that under such circumstances the result is not satisfactory, and in the interests of the administration of justice this conviction ought not to be allowed to stand. It is most important in the administration of justice by magistrates, who now have so many jurisdictions to exercise, that such administration should be free not only from any interference by motives which ought

not to influence judicial tribunals, but also from any appearance of conduct which might give reasonable apprehension of such motives. If such reasonable apprehension became general it might seriously interfere with the administration of justice, and impair the confidence which the public ought to have in such administration. Suppose, as has been very properly put by my brother Wright during the argument, that all the justices had been licensed pilots, or that all had been unlicensed pilots, could anyone say that it would have been a proper tribunal to try such a case as this. There can be only one answer to that question, and the same principle applies here where one only of the justices was a licensed pilot. Without attributing to Mr. Martin anything approaching to misconduct, or anything more than a mistake which was natural under the circumstances, as no objection was made to him, I think there is enough in this case to justify us in saying that the constitution of the bench was not such as it ought to have been, and the key-note of my judgment therefore is that this gentleman belonged to a small class for whose benefit these proceedings were taken.

WRIGHT, J.—I am of the same opinion, and for the same reasons. Mr. Poland has referred to cases where this Court has been asked to interfere on somewhat similar grounds with the proceedings of administrative bodies—not courts of justice, but administrative bodies such as the county council, or the College of Physicians. But there is a real difference between the two cases. We ought to be very slow indeed to interfere with those outside bodies, unless something really wrong has been done; but not so with regard to inferior Courts. With regard to them we ought to act on slighter grounds than in the case of administrative bodies.

*Rule absolute.*

Solicitor for applicant, *E. H. Bedford.*

Solicitors for Larkins, *Sismey* and *Sismey*, for *Tolhurst, Lovell*, and *Clinch*, Gravesend.

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## QUEEN'S BENCH DIVISION.

*Thursday, Jan. 31, 1895.*

(Before WILLS and WRIGHT, JJ.)

GRANT v. THOMPSON. (a)

*“Maintenance”—Criminal proceedings—Maintenance of criminal suits—Legality of—Indemnity for costs—Right of action on indemnity.*

*The doctrine of maintenance is confined to civil actions, and does not apply to criminal proceedings, the “maintaining” of which is therefore not illegal; and accordingly, where a person gives a guarantee whereby he agrees to indemnify a solicitor in respect of the costs of criminal proceedings to be undertaken against another person, and such proceedings are taken and costs incurred, the solicitor can maintain an action on such guarantee, and the person sued thereon cannot set up as a defence that the agreement was void as being tainted with the illegality of maintenance.*

**A**PPEAL by the defendant from a judgment of his Honour Judge Lumley Smith, Q.C., sitting at Westminster County Court (reported 98 L. T. Rep. 65).

The facts as stated in the judgment of the learned judge were as follows :

The plaintiff, a solicitor, sought to recover from the defendant a sum of 20*l.* for work done as solicitor for Madame Holderner under the following guarantee.

24, Bride-lane, London, E.C., 11th Aug. 1892.—Dear Sir,—In consideration of your taking up the proceedings against Nassib A. Shibley on behalf of Madame Holderner, I hereby undertake and agree to indemnify you to the extent of 20*l.* towards the costs of such proceedings, it being understood that you are not to call upon me to pay you that sum for a period of twelve months from this date.—Yours faithfully, T. GIBSON THOMPSON.—G. R. Grant, Esq., Solicitor.

The facts were as follows : The defendant had been in the employment of Shibley, and sued him for damages for wrongful dismissal, but failed. Shibley retaliated by charging the defendant with theft, but failed. The plaintiff acted as solicitor for the defendant in both proceedings. The plaintiff then stated to the defendant that Shibley had hired furniture of one Bustani, and had dealt with the furniture in such a way as to bring himself within the criminal law, and that Bustani could prosecute

him. The plaintiff accordingly assisted the defendant to open communications with Bustani. Bustani and Madame Holderner (who was stated to be the wife of Bustani, and whose property the goods turned out to be) consented to a prosecution being commenced by the plaintiff in the name of Madame Holderner. Shibley was charged, and, after being remanded in custody, was committed for trial at the Middlesex Quarter Sessions, for larceny as a bailee, under 24 & 25 Vict. c. 96, s. 3. After the commencement of the proceedings, the plaintiff obtained from the defendant the guarantee now in question. Shibley was acquitted; Bustani and Madame Holderner disappeared without paying any part of the plaintiff's bill of costs, amounting to over 72*l.*, and after some delay the plaintiff brought the present action against the defendant.

The learned judge drew the inferences of fact from the evidence that the defendant did not act from charitable motives towards Madame Holderner, and that there was no privity of estate, kinship, or relationship of master and servant, or otherwise between the plaintiff and Madame Holderner, of the nature to justify maintenance, as explained in *Harris v. Briscoe* (55 L. T. Rep. 14; 17 Q. B. Div. 504) and other cases, and that the plaintiff knew all this.

Before the learned judge it was objected on the part of the defendant that the agreement was void as tainted with the illegality of maintenance. The plaintiff replied that the maintenance of criminal suits is legal; and secondly, that even if such maintenance is illegal, the agreement is nevertheless binding as between himself and the defendant.

The learned judge held that the maintenance of criminal suits is not illegal, and that it was not illegal on the part of the defendant to "maintain" Madame Holderner's criminal proceedings. It therefore became unnecessary for him to decide the second point, namely, whether, assuming maintenance, the contract between the plaintiff and the defendant is nevertheless binding on the defendant, though he expressed the opinion that as maintenance is a misdemeanour and the contract had been made when the plaintiff and defendant were fully cognisant of all the facts, it was very doubtful if the contract could be enforced, assuming the law of maintenance to apply. He therefore gave judgment for the plaintiff for 20*l.*, the amount claimed, and he gave leave to appeal.

The defendant appealed.

*Boxall* (Willis, Q.C. with him) for the defendant.—A person has a right to prosecute in his own name; the question here was whether he could prosecute in another's name without coming within the law as to maintenance. Maintenance of criminal proceedings was as illegal as maintenance of civil proceedings. This was clearly stated by Lord Coleridge, C.J., in *Bradlaugh v. Newdegate* (11 Q. B. Div. 1), where he says (at p. 13): "The doctrine of maintenance is not confined to civil actions, and, if this be

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legal, it will be legal to agree to pay the expenses of anyone who will indict another for the misdemeanour of non-compliance with any Act of Parliament." That clearly shows that in Lord Coleridge's judgment maintenance of criminal suits was illegal. In art. 156 of Stephen's Digest of the Criminal Law (5th edit., p. 112), maintenance is defined as "the act of assisting the plaintiff in any legal proceeding in which the person giving the assistance has no valuable interest, or in which he acts from any improper motive:" so in 1 Russell on Crimes, 5th edit., p. 351, it is said, "Maintenance seems to signify an unlawful taking in hand or upholding of quarrels or sides, to the disturbance or hindrance of common right;" and in 1 Hawkins P. C., 8th edit., p. 454, "maintenance is where one officiously intermeddles in a suit depending in any court which no way belongs to him, by assisting either party, with money or otherwise, in the prosecution or defence of any such suit." The "maintaining" of quarrels was punishable under several old statutes, such as 1 Ed. 3, c. 14, 1 Rich. 2, c. 4, 32 Hen. 8, c. 9, and the word "quarrels" would include criminal suits. [He also referred to the definition of "maintenance" in Viner's Abr. and Brooke's Abr., and to *Saukells'* case, Hetley's Rep., p. 78.]

*R. Wallace*, Q.C., (*G. C. Smith* with him), for the plaintiff, was stopped.

WILLS, J.—I am very clearly of opinion that the County Court judge was right, and I also think that he gave a very careful and exhaustive judgment on the subject. It seems to me that the law is, that there cannot be maintenance in the case of a criminal prosecution. The prosecutor in criminal proceedings is only nominally the prosecutor, and the theory is that the prosecution is a proceeding taken at the suit of the Crown. The reason why a person has the right to use the name of the Sovereign in criminal proceedings is, that it is for the benefit of the community that there should be no impediment in putting the criminal law in motion when circumstances demand it. In such a case as the present the circumstances did not demand it, but no one can foresee that until the case is ended. The real remedy of the plaintiff when he complains that the criminal law has been improperly put in motion against him is by an action for malicious prosecution, and if in such action it should appear that there was no reasonable and probable cause, and that there was malice, then the person who so put the law in motion, whether the nominal prosecutor or not, would be liable. That being so, there is therefore effectual protection in the case of an unfounded prosecution. In civil suits there is no such protection, because in civil suits there is no action for malicious prosecution analogous to one for malicious prosecution consequent upon a proceeding in a criminal court. That would seem to show that the only case where you can have an action for maintenance is where there cannot be an action for malicious prosecution—that is, in civil suits. When we once realise that every person has an

interest, and is allowed to put the law in motion in criminal matters, the foundation of the doctrine of maintenance is gone. Maintenance is meddling with matters in which a person has no concern. This clearly can have no application in criminal matters, as a person puts the criminal law in motion, not for his own protection, but for the public good. That seems to me to be substantially the view the learned judge took in this case, and I should hardly have thought it necessary to say so much if it had not been for the great respect I entertain for the opinion expressed by Lord Chief Justice Coleridge in the case of *Bradlaugh v. Newdegate* (*ubi sup.*), that the doctrine of maintenance is not confined to civil actions. That was a mere dictum, and I do not think it was at all necessary for the decision of the case, and probably there were no authorities on that point brought to his attention. Now, in the present case the learned counsel for the defendant has found it necessary to rely on that dictum; but it is sufficient to say in general terms that he has not been able to produce even the semblance of an argument in favour of his contention. He has founded an argument on the meaning of the word "quarrel" in certain of the definitions of maintenance which speak about interfering in "quarrels and actions." But the word "quarrel" is certainly not applicable to proceedings of a criminal nature by the Crown, nor is the word "action," though in Comyn's Digest, to which we have been referred, the word is apparently used as applicable in criminal matters, but it is not so used in the ordinary acceptation of the term. It has never been generally used with such a meaning, either in Acts of Parliament or elsewhere. During the argument we have been referred to the proceedings in "attaint." That was a very peculiar proceeding, and it was commenced by a writ of attaint which could issue either out of Chancery or out of the King's Bench or Exchequer. The judgment in such a proceeding was partly punitive, and it is quite obvious that that proceeding has an analogy to the present case. I think, therefore, that this appeal fails.

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WRIGHT, J.—I agree.

*Appeal dismissed.*

Solicitors for the plaintiff, *G. R. Grant and Co.*

Solicitors for the defendant, *Easton and Cargill.*

## CROWN CASES RESERVED.

*Saturday, July 28, 1894.*

(Before Lord RUSSELL, C.J., MATHEW, DAY, WILLIAMS, and KENNEDY, JJ.)

REG. v. SILVERLOCK. (a)

*Practice—Indictment — False pretences — Necessary averments — Person to whom pretence made — Particularity—Evidence — Admissibility — Skilled witness — Expert in handwriting — Experience acquired otherwise than in profession or business.*

*An indictment which alleges that a prisoner by means of an advertisement in a newspaper made a false pretence to all Her Majesty's subjects, by means of which a person named in the indictment was induced to part with money in the belief that the pretence was true, sufficiently alleges that the false pretence was made to the person so named.*

*Reg. v. Sowerby [11 L. T. Rep. 300 ; (1894) 2 Q. B. 173 ; 63 L. J. 136, M. C.] explained on the ground that in that case the indictment omitted to state not only the person to whom the pretence was made, but also the person from whom the money was obtained ; and the Court could not, in the absence of both these averments, infer that the false pretence was made to any person in particular.*

*In order to render the evidence of a witness admissible on the ground that he is skilled in the matter upon which he is called to give evidence, it is not necessary that such person should be skilled in such matter by reason of his profession or trade. It is sufficient if the Court is satisfied that he has in some way or other gained such experience in the matter as to entitle his evidence to credit.*

CASE stated by the Chairman of the Quarter Sessions for the county of Worcester.

The prisoner was tried on the following indictment :

Worcestershire to wit.—

The jurors of our Lady the Queen upon their oath present that George Silverlock on the twenty-fourth day of May, in the year of our Lord one thousand eight hundred and ninety-four, unlawfully, knowingly, and designedly did falsely pretend to one Rosa Alice Coates that the name of him, the said George Silverlock was then Charles Brown ; that the said Charles Brown then resided and carried on business at No. 75,

(a) Reported by R. CUNNINGHAM GLEN, Esq., Barrister-at-Law.

Fetter-lane, High Holborn, London; that the said Charles Brown then had a branch drapery establishment at Oxford, where two other servants were kept, and then required a steady, reliable, and economical housekeeper for the said branch establishment to look after the comforts, &c., of twelve young ladies and gentlemen there; that the said Charles Brown was then able and willing to engage the said Rosa Alice Coates as such housekeeper as aforesaid, and also to pay to the said Rosa Alice Coates the sum of thirty-five pounds per annum as such housekeeper as aforesaid; that one John Lewis formerly carried on business at No. 61, Chandos-street, Strand, and had then removed to and carried on business at No. 28, Maiden-lane, Strand, London, and was then the solicitor of the said Charles Brown, and that the said Charles Brown then *bond fide* required the said Rosa Alice Coates to deposit with the said John Lewis, as such solicitor as aforesaid the sum of five pounds as a security and by way of guarantee for the honesty of the said Rosa Alice Coates as such housekeeper as aforesaid, by means of which said false pretences the said George Silverlock did then unlawfully obtain from the said Rosa Alice Coates a certain valuable security, to wit, an order for the payment of money commonly called a banker's cheque, and of the value of five pounds, with intent to defraud, whereas in truth and in fact the name of him the said George Silverlock was not then Charles Brown; and whereas in truth and in fact the said Charles Brown did not then reside and carry on business at No. 75, Fetter-lane aforesaid, and had not then a branch drapery establishment at Oxford where two other servants were kept, and did not then require a good, steady, reliable, and economical housekeeper for the said branch establishment to look after the comforts, &c., of twelve young ladies and gentlemen there; and whereas in truth and in fact the said Charles Brown was not then able and willing to engage the said Rosa Alice Coates as such housekeeper as aforesaid, or to pay the said Rosa Alice Coates the sum of thirty pounds per annum wages as such housekeeper as aforesaid; and whereas in truth and in fact the said John Lewis did not formerly carry on business at No. 61, Chandos-street, Strand, aforesaid, and had not then removed to and did not then carry on business at No. 28, Maiden-lane, Strand, aforesaid, and was not then the solicitor of the said Charles Brown; and whereas in truth and in fact the said Charles Brown did not then *bond fide* require the said Rosa Alice Coates to deposit with the said John Lewis as such solicitor as aforesaid the sum of five pounds as security and by way of guarantee for the honesty of the said Rosa Alice Coates as such housekeeper as aforesaid, as he the said George Silverlock well knew at the time when he did so falsely pretend as aforesaid, against the form of the statute in such case made and provided and against the peace of our said Lady the Queen, her crown and dignity.

Second count.—And the jurors aforesaid upon their oath aforesaid do further present that the said George Silverlock on the 17th day of May in the year aforesaid, by inserting and causing to be inserted in a certain newspaper called *The Christian World* a fraudulent advertisement in the words and figures following, that is to say, "Housekeeper wanted for branch business establishment in Midlands; one from country preferred. Address, 'S.C.,' *Christian World* Office"—did falsely pretend to the subjects of Her Majesty the Queen that he the said George Silverlock then required a housekeeper for a branch business establishment in the Midlands; by means of which said last-mentioned false pretence the said George Silverlock did then unlawfully obtain from the said Rosa Alice Coates a certain valuable security, to wit, an order for the payment of money commonly called a banker's cheque, and of the value of five pounds, with intent to defraud, whereas in truth and in fact he the said George Silverlock did not then require a housekeeper for the branch business establishment in the Midlands, as he the said George Silverlock well knew at the time when he did so falsely pretend as last aforesaid, against the form of the statute in such case made and provided and against the peace of our said Lady the Queen, her crown and dignity.

Before the prisoner pleaded his counsel applied to have the second count of the indictment quashed on the ground that it was not stated therein that the false pretence was made to any definite person, but to all the subjects of Her Majesty the Queen, and that, therefore, it was bad in law, on the authority of *Reg. v. Sowerby* (17 Cox C. C. 767; 63 L. J. 136, M. C.; (1894) 2 Q. B. 173). The prosecution contended that in the offence of false pretences by advertisement no specific person could be named, and they relied on the cases of *Reg. v. Cooper* (13 Cox C. C. 187; 33 L. T. Rep. N. S. 754; 45 L. J. 15, M. C.; 1 Q. B.

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Div. 19) and *Reg. v. Sargent* (39 J. P. 760), and further contended that, even if the second count was bad in law, the first count would still be good in law; but, as the chairman did not consider the point had been taken in *Reg. v. Sowerby*, he overruled the objection subject to the opinion of this Court.

In the course of the trial it was proposed to prove a certain draft advertisement of "S. C.," and certain letters from Charles Brown and John Lewis alleged to be in the prisoner's handwriting, by comparison of the handwriting in such draft advertisement and letters with that of admitted handwriting of the prisoner; and the solicitor for the prosecution was called as an expert for this purpose. Counsel for the prisoner objected that the solicitor was not an expert, and could not give evidence as to his opinion, and cited the case of *Reg. v. Harvey* (11 Cox, 546) and Blackburn, J.'s dictum therein, that a policeman was not an expert. The solicitor himself said that he had, quite apart from his professional work, for some years—that is, since 1884—given considerable attention and study to handwriting, and especially to old parish registers and wills. He said he had on several occasions professionally compared evidence in handwriting, but said that he had never before given evidence as to handwriting. He stated that he had formed an opinion that the prisoner was guilty before he began to compare the handwriting. I overruled the objection and admitted the evidence on the ground that all the objections went to the weight, not to the admissibility of the evidence, and that there was nothing in the Act 28 & 29 Vict. c. 18, which makes it necessary to have the evidence of handwriting given by a professional expert, and that anyone who has studied handwriting is competent to give evidence, the weight to be given to such evidence being a matter for the jury. The jury convicted the prisoner, and I, at the request of the prisoner's counsel, agreed to state this case for the opinion of the High Court on the following questions of law:—(1) Whether an indictment for false pretences by advertisement must allege a specific person to whom the false pretence was made, or will an indictment for false pretences by advertisement alleging a false pretence to all the Queen's subjects be good in law? (2) Whether it is necessary, in the case of proving handwriting by comparison, for the person who draws attention to the points of resemblance to be a professional expert or a person whose ordinary business leads him to have special experience in questions of handwriting, or will the evidence of any person who has, or states he has, for some years studied handwriting, be admissible for that purpose? If the Court should be of opinion that the first part of the first question should be answered in the affirmative and the second in the negative and the first part of the second question in the negative and the last part in the affirmative, the conviction will stand; if not, the conviction will be quashed. The defendant was sentenced to twelve months' imprisonment with hard labour, but the Court directed him



to be released on bail in his own recognisance of 40*l.* and two sureties of 20*l.* each. As he was unable to find bail he is now in prison.

*Marchant*, on behalf of the prisoner, submitted, first, that the indictment was bad, inasmuch as it omitted to allege with sufficient particularity the person to whom the false pretence was made; and, secondly, that the evidence as to the handwriting was not that of a professional expert, and had therefore been improperly admitted. In support of the first point, he relied upon *Reg. v. Sowerby* (*ubi sup.*) as showing that the omission of an allegation of the person to whom the false pretence was made was fatal to the indictment, and that an allegation that the pretence was made to all Her Majesty's liege subjects was practically the same as if no allegation at all had been made owing to its generality. He referred to the precedent in Archbold's Criminal Pleadings, 10th edit., p. 536, which is, "did falsely pretend to one J. N.," and submitted that the allegation that by means of the false pretence money was obtained from a particular person did not supply the omission to allege that the false pretence was made to that person, it being consistent with the averments in the indictment that the pretence had been made to one person and the money obtained from another. In support of the second point he submitted that the witness who gave evidence as to the handwriting was merely an amateur and not a professional expert; and that it was laid down in the authorities that a person to be a skilled witness must be expert by virtue of his trade, profession, and learning. The statute 28 & 29 Vict. c. 18, s. 8, merely enabled a comparison to be made of handwritings, but did not alter the mode in which the comparison was to be made. In *Taylor on Evidence*, 8th edit., s. 1870, p. 1585, it is stated that, under this enactment, the comparison may be made by witnesses acquainted with the handwriting, by witnesses skilled in deciphering handwriting, or without the intervention of witnesses at all, by the jury themselves, or, if there is no jury, by the court; and in *Reg. v. Harvey* (11 Cox C. C. 546), upon the authority of *Reg. v. Wilbain and Ryan* (9 Cox C. C. 448, Irish) a policeman's evidence as to handwriting was rejected. [Lord RUSSELL, C.J.—It is to be observed that in *Reg. v. Harvey* Blackburn, J. merely pointed out that the policeman was engaged in the case.] In *Bristow v. Sequeville* (5 Ex. 275; 19 L. J. 289 Ex.) it was held that a witness whose knowledge of the law of a foreign country was derived solely from study at a university could not give evidence as a skilled witness. In *Rowley v. London and North-Western Railway Company* (L. Rep. 8 Ex. 221; 29 L. T. Rep. 180; 42 L. J. 153, Ex.) Blackburn, J. said: "It was objected that the witness was not an actuary, but only an accountant; but, as he gave evidence that he was experienced in the business of life insurance, we think his evidence was admissible." He also cited the *Sussex Peerage* case (11 Cl. & F. 85) as to who could give evidence as an expert as to foreign

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law; and the *Tracy Peerage* case (10 Cl. & F. 154) as to the little weight attached even to the evidence of witnesses as to entries in an old prayer-book whose occupations for a long time had made them so conversant with manuscripts of different ages, that they could take upon themselves to name the period in which a manuscript was written. The principle upon which expert evidence is admissible is stated in Best on Evidence, at p. 464.

*Vachell*, on behalf of the prosecution, was not called upon in answer to the question as to the admissibility of the evidence, and, in support of the indictment, submitted that the allegations in the first count set out correctly the facts at the time the false pretence was made, it having been advertised in a paper, and therefore published to everyone. The case of *Reg. v. Sowerby* (*ubi sup.*) is merely an authority that there must be an allegation that the pretence was made to someone, otherwise there is no allegation of a false pretence at all, and it is not an authority that the allegation must be that the pretence was made to the person defrauded. He stated, in answer to the court, that the second count was inserted in the indictment because the indictment in *Reg. v. Cooper* (33 L. T. Rep. 754; 1 Q. B. Div. 19; 13 Cox C. C. 123; 45 L. J. 15, M. C.) contained a similar count, and no objection was made to it.

LORD RUSSELL, C.J.—This case comes before the Court under these circumstances: The prisoner was on the 18th day of June, 1894, tried at quarter sessions upon an indictment which contained two counts. The first count stated, and stated in an unobjectionable way, certain false pretences as having been made to one Rosa Alice Coates upon the strength of which the prisoner obtained from her a cheque for the sum of 5*l.* The second count, which is the one we are here considering, alleged that the prisoner had inserted an advertisement in a paper called the *Christian World*, which advertisement ran thus: "Housekeeper wanted for branch business establishment in the Midlands. One from country preferred.—Address S. C., *Christian World* Office." The count then proceeds that by means of that advertisement the prisoner did falsely pretend to all the Queen's subjects, that is to all to whom knowledge of the advertisement came, that he then required a housekeeper for a branch establishment in the Midlands, and thereby obtained from Rosa Alice Coates a cheque for 5*l.* At the trial objection was taken to the second count of the indictment; but no objection was or could be taken to the first count, and my surprise begins at this point, that the prosecuting counsel, as the facts applied to both the counts, did not ask the Court to take the verdict of the jury upon each of the counts. This would have been the ordinary course, and if it had been taken this case could not have come before us. That course was not, however, taken; and we have to decide the question whether the second count is a good one. Now, there is no doubt as to what constitutes the essentials of the offence charged.

There must be a false pretence made, it must be made to a definite person, and it must be proved that such person upon the strength of that false pretence, parted with his or her money or goods. Inasmuch then as these are the essential ingredients of the offence, they must be stated in the indictment which charges the offence. The question here is, does this count, or does it not, fulfil those conditions? Upon the whole, I have arrived at the conclusion that it does sufficiently state those essential conditions. In the first place, the advertisement is addressed to all to whom knowledge of it may come; and if a particular person seeing that advertisement or hearing of it, acts upon it and goes to the person who caused it to be inserted, and on the faith of it parts with his money or goods, it becomes a false pretence addressed to that particular person who is one of the class of persons it was intended to act upon. Now, does not that sufficiently appear here? I think it does; it begins by stating that the prisoner inserted the advertisement and thereby made a false pretence, and it then proceeds in these words, which are the important words in this averment, "by means of which he obtained from Rosa Alice Coates a cheque for 5*l*. It therefore does satisfy the requirements by stating the necessary essentials to prove an obtaining money by false pretences, though it does so loosely and anything but clearly. The case of *Reg. v. Sowerby (ubi sup.)*, to which reference has been made, we should of course regard as a binding authority; but when it comes to be looked at it is really no authority in favour of the contention based upon it, because there were two important essentials which were wanting. First, there was no allegation that the false pretence was made to anyone; and, secondly, there was no allegation of the person from whom the money was obtained. It is to be observed, therefore, that the indictment there was wanting in that it did not state to whom the false pretence had been made, whereas here the false pretence is alleged to be made to all the world, and the person to whose knowledge the advertisement came, and who acted upon it, would come within that class of persons. The indictment in that case was further wanting in that which is alleged in the present indictment, because it omits the material allegation of the person from whom the money was obtained by means of the false pretence. The case of *Reg. v. Sowerby* decides no more than this, that without those two necessary allegations the Court could not, after verdict supply the omissions. I therefore come to the conclusion that the second count in the present indictment is good. As regards the second question, concerning the proof of the handwriting, it is quite true that this is one of that class of cases in which, if a person who is called to give evidence professes to be an expert, he must be skilled; but I cannot assent that he must have become *peritus* in the way of his business, or in any particular way. The question is, Is he *peritus*? If it is attempted to call a witness who is not skilled, the judge would point out that his evidence ought

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to be disregarded; but I know of no case which requires, as contended, that a man who is skilled in the matter, a man who from past experience is fitted to speak on a question of experience, is to be excluded as a competent witness merely because he has not gained that experience in the way of his business. I say that generally. But in this particular case the witness was *peritus*—in the way of his business. The witness said he had for some years past given considerable attention and study to hand-writings, and especially to old parish registers and wills. Once it is determined—and that is the only point we have to determine—that the evidence was admissible, the question of what weight was to be given to it was for the jury, according as they believed him to be *peritus* in the matter with reference to which he was giving evidence. As regards the two cases cited, I do not regard either of them as authorities for the purpose for which they were cited. They amount to no more than this, that in each case the witness was a policeman, and the judge thought that under the circumstances of that case the evidence was not admissible. Having arrived at the conclusion that the count was good and the evidence admissible, I am of opinion that the conviction must stand.

MATHEW, J.—I am of the same opinion. The first question as to the form of the count is the only one which appears to me to raise any difficulty; and that difficulty could have been avoided if the ordinary course had been followed of taking the verdict of the jury upon each count. It is very important that that circumstance should be borne in mind; because here we are obliged to go back and apply the old law as it was in the time of Meeson and Welsby. It is not necessary to go through the elements essential to constitute the offence of false pretences; they are familiar to every lawyer. A very excellent description of what is necessary in an indictment for obtaining money by false pretences will be found in the judgment of the present Master of the Rolls in *Reg. v. Aspinall* (2 Q. B. Div. 48), where he says that, “To support a charge of obtaining money by false pretences, it is necessary to show, and therefore to allege, that a prisoner with a wicked and criminal mind, stated something which, if true, would be an existing fact; that he did so with intent to procure the possession of money, &c.; that he knew his statement was—that is to say, that so far as his mind was concerned he intended that his statement should be—false; that by the statement he did so act on the mind of the prosecutor as that he did thereby obtain money; or, that the statement was in fact untrue, in the sense of being incorrect.” Now, if we take this count, it is clear that it offends against the old rules applicable to such matters. But those rules are subject to an extremely important qualification, namely, that after verdict, though you may not supply an absent averment, you may treat another averment which is there as supplying the omission, and we are therefore entitled to point to the fact that the jury had all the facts on

the first count brought to their minds. The rule is discussed in *Reg. v. Aspinall* (*ubi sup.*), for the same learned judge says: "There is another rule with regard to pleading which must be enunciated, the rule with regard to the effect to be given to pleadings after verdict. It is thus stated in *Heyman v. The Queen* (L. Rep. 8 Q. B. 102): "Where an averment, which is necessary for the support of the pleading, is imperfectly stated, and the verdict on an issue involving that averment is found, if it appears to the court after verdict that the verdict could not have been found on this issue without proof of this averment; then, after verdict, the defective averment, which might have been bad on demurrer, is cured by the verdict.' Upon this it should be observed that the averment spoken of is 'an averment imperfectly stated,' i.e., an averment which is stated, but which is imperfectly stated. The rule is not applicable to the case of the total omission of an essential averment." That appears to be distinctly applicable to this, and that and *Hamilton v. The Queen* (9 Q. B. 271) dispose of this case. The distinction between this case and *Reg. v. Sowerby* is, that in that case there were absent necessary averments which could not be supplied under the rules to which I have referred. What weighed upon some members of the Court was that, if a person had been acquitted on that count, and had been subsequently indicted for the same offence, he would have had a difficulty in setting up his acquittal. With regard to the point as to the proof of the defendant's handwriting, I am clearly of opinion that the evidence was admissible.

DAY, J.—I concur with my Lord.

WILLIAMS, J.—I am of the same opinion, and I do not think it was necessary to refer to the rules to which my learned brother Mathew has referred, and which enable the court to supply an imperfect averment. Because here, although the count is inartistically drawn, I consider it was sufficient.

KENNEDY, J.—I concur in the judgment of my Lord.

*Conviction affirmed.*

Solicitor for the prosecution, *J. Whitmore.*

Solicitor for the prisoner, *Garratt, Dudley, Worcestershire.*

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## CROWN CASES RESERVED.

*Saturday, Feb. 2, 1895.*

(Before Lord RUSSELL, C.J., POLLOCK, B., WILLS, CHARLES, and LAWRENCE, JJ.)

REG. v. MUNSLOW. (a)

*Defamatory libel—Practice — Indictment — Necessary averment — Inference of law—Allegation that publication was malicious.*

*It is not necessary to allege in an indictment facts which the law will necessarily infer from the proof of other facts which are alleged.*

*An indictment for unlawfully writing and publishing a defamatory libel omitted to allege that the libel was published maliciously : Held, that the indictment was nevertheless good, inasmuch as upon proof of the publication of the libel the legal inference, until rebutted by the defendant, was that it was published maliciously, and the allegation that the publication was malicious was not therefore a necessary averment.*

CASE stated by Cave, J. as follows :—

1. George Munslow was tried before me at the last assizes at Warwick on an indictment for libel under sect. 5 of 6 & 7 Vict. c. 96.

2. The indictment contained three counts, each setting out a separate libel. The language of each count, so far as it affects the question of law raised before me, was identical, and for the purpose of the present case it is only necessary to set out the material words of the first count, which were as follows: "The jurors for our Lady the Queen upon their oath present that George Munslow unlawfully did write and publish a certain defamatory libel of and concerning Henry Truelove according to the tenor and effect following—that is to say" . . . (Here follow the specific words of the particular libel complained of.)

3. The prisoner pleaded not guilty, whereupon counsel on his behalf applied to me to quash the indictment on the ground that it did not contain any averment that the prisoner published the libels or any of them maliciously, and did not therefore sufficiently disclose any offence under the aforesaid section.

[(a) Reported by R. CUNNINGHAM GLEN, Esq., Barrister-at-Law.]

4. I refused this application and allowed the case to proceed, and the prisoner having been convicted on all the counts, his counsel raised the same question by way of motion in arrest of judgment. I thereupon postponed sentence, and took bail for the prisoner to come up for judgment if called upon at the next assizes, and consented to state a case for the consideration of this court.

The question for the opinion of the court is whether judgment ought to be arrested on the ground taken by the prisoner's counsel.

6 & 7 Vict. c. 96, s. 5 enacts that :

If any person shall maliciously publish any defamatory libel, every such person, being convicted thereof, shall be liable to fine or imprisonment, or both, as the court may award, such imprisonment not to exceed the term of one year.

*Stanger*, on behalf of the prisoner, submitted that it was essential to support the conviction that the publication of the libel should have been found to be malicious, and that it was therefore necessary to aver in the indictment that the libel was published maliciously. Although the law will infer malice in many cases, it may be that the circumstances proved by the prosecution may show, or that the prisoner may prove, the publication to have been privileged, in which case evidence of express malice would be required, and it followed must be alleged in the indictment. In *Reg. v. Harvey* (1 C. C. R. 284) it was held that, where it was an offence to do a thing "without lawful authority or excuse," the proof of such authority or excuse lying on the person accused, it was necessary to negative lawful authority or excuse in the indictment nevertheless. Further, it is a question of fact whether or not a publication was malicious, and it was clear that the allegation that the libel was published "unlawfully" would not supply the allegation that it was published "maliciously"; and if the latter allegation was essential to the validity of the indictment its omission could not be cured by the verdict. In *Emmens v. Pottle and another* (16 Q. B. Div. 354) Lord Esher, M.R. seems to have considered that it was for the jury to find whether the defendant then knew that the paper contained a libel, which was in effect leaving it to the jury to find malice. Even assuming that the averment was necessary, its omission was not cured by the verdict of the jury, inasmuch as the rule as to the curing of imperfectly-stated averments by the verdict is not applicable to the case of the total omission of an essential averment. See Brett, J.A., in *Reg. v. Aspinall* (36 L. T. Rep. 297; 2 Q. B. Div. 48; 13 Cox. C. C. 563; 46 L. J. 145, M. C.). In *Rex v. Ryan* (2 Moo. C. C. 15) it was held that the omission of the word "unlawfully" rendered an indictment under 9 Geo. 4, c. 31, s. 12, bad, although the word "maliciously" was used; and *Rex v. Turner* (1 Moo. C. C. 239) was a similar decision. The present indictment was founded upon the statute and in *Rex v. Cox* (1 Leach C. C. 71) the Court held that, where

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the word "wilful," was used in a statute creating the offence it was necessary to aver in the indictment that the offence was committed wilfully; so also in *Rex v. Davis* (*Ib.* 493) an indictment under the Black Act was held bad for omitting to charge the shooting to have been done "wilfully and maliciously" as well as feloniously. If the description in the statute merely described the common law offence of libel, it would not create any new offence; but if it described something different, as it was submitted it did, then the statute created a new offence, and the offence being alleged *contra formam statuti*, it was necessary that it should be charged in the words of the statute.

*Hugo Young*, in support of the conviction, submitted that, even if the indictment, being founded upon the statute, should have alleged that the libel was published maliciously, yet in *Reg. v. Boale* (21 Q. B. Div. 284) it was held that, on an indictment for publishing a defamatory libel "knowing the same to be false," the defendant may be convicted of the common law offence of publishing a defamatory libel. The averment was one which was necessarily involved in the verdict, and was therefore cured, according to the rule in *Heyman v. The Queen* (28 L. T. Rep. 8 Q. B. 102; 12 Cox C. C. 383). It was further submitted that the allegation of malice was unnecessary to the validity of the indictment, inasmuch as the law inferred from the mere publication of a defamatory libel that it was published maliciously; and it was therefore unnecessary to aver that which the law would necessarily infer from the averments that were made: (*Mercer v. Sparks*, referred to in *Viner's Abr.*, followed in *Bromage v. Prosser*, 4 B. & C. 247, at p. 255.)

*Stanger* in reply.

LORD RUSSELL, C.J.—This is a case in arrest of judgment, and the matter comes before us upon a case stated by my learned brother Cave, who presided at the trial of an indictment charging the defendant with libel. The indictment contained three counts, and the language of those counts, for the purposes we have to consider to-day, may be taken to be identical. They stated that the defendant "unlawfully did write and publish a certain defamatory libel of and concerning Harry Truelove according to the tenor and effect following," and the indictment then proceeds to set out the libel complained of. It will therefore be seen to have omitted the word usually found in such an indictment, namely, "maliciously." Speaking for myself, it is deplorable that the law admits of its being possible to raise such an objection as the present, and that the existing law does not admit of such an omission being then and there supplied by the judge at the trial. The point was, however, taken that the indictment was bad, and the substantial question we have to determine is, was the indictment bad? The case was intended to be presented by the prosecution as coming within sect. 5 of 6 & 7 Vict. c. 96, and undoubtedly it is clear that the case was presented to the jury as a case coming within that section. Now, what is the

effect of coming within that section? It provides that, if any person shall maliciously publish any defamatory libel, every such person, being convicted thereof, shall be liable to fine or imprisonment, or both, as the Court may award. It therefore does not, so far as its language is concerned, disclose the creation of any new offence, nor does it purport to be a definition of an existing offence. It is merely an application to that which is an offence at common law of the punishment which is to take place upon a conviction for the common law offence. Therefore all the line of cases referred to by the learned counsel in his able argument on behalf of the defendant, which relate to offences created by statute, have no bearing upon the present case. Why was it that the word "maliciously" was introduced? It is obviously necessary that it should have been introduced, for, if it had not, it would have worked a great deal of injustice, for anyone who publishes defamatory matter of another is guilty of publishing a libel. The word "maliciously" is introduced in order to convey that, although a man would be *prima facie* liable for publishing a defamatory libel, yet he can rebut that by displacing the presumption that the publication was malicious. The judge at the trial has to direct the jury whether it is capable of being treated as a defamatory libel, and there his functions end. The common law attaches to the mere fact of publication that it was malicious. But the defendant may be able to show that, though it was in fact a defamatory libel, yet it was published upon a privileged occasion, or that it was true and published for the public benefit. That class of cases was excluded by the use of the word "maliciously." We must follow it out clearly. The case goes to the jury, and it must be assumed that the libel was capable of the innuendoes put upon it; and that the jury found that it was in fact a libel, and that there was no justification for its publication. The question arises in that state of things whether the conviction is one which is to be quashed merely because the word "maliciously" was omitted in the indictment. The argument is, in effect, that this was an indictment under the statute, and for an offence under the statute. But, in my judgment, that is a mistake. It was an indictment for the common law offence, but one which was so framed as to bring it within the section. Then, is an indictment which merely omits the word "maliciously" a bad indictment? It is common ground that the practice in both civil and criminal cases is the same. Then, if in civil cases a declaration for a defamatory libel would be good on demurrer which omitted that word, an indictment would also be good. No doubt the law implies malice from the publication of defamatory matter. Now, how stand the authorities? The first case is *Rex v. Harvey*, decided in 1823 (2 B. & C. 256). That is a case in which the defendants were indicted for a libel imputing to George IV. mental insanity, and, although the point did not arise, the language used by the learned judges, upon motion being made

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for a new trial, throws an important light on the question. The jury, after being dismissed, wished to know if it was necessary that there should be a malicious intention to constitute a libel, and Abbott, C.J. replied that, "The man who publishes slanderous matter in its nature calculated to defame and vilify another must be presumed to have intended to do that which the publication is calculated to bring about, unless he can show the contrary; and it is for him to show the contrary." Upon the new trial motion coming on, Bayley, J. on page 263, says: "It is considered that to state falsely of his Majesty that which is stated in this publication is a libel. If it be not so, the objection will be upon the record, and may be taken advantage of either upon writ of error or by a motion in arrest of judgment. But, as at present advised, I am of opinion that falsely making that assertion was evidence that the party made it maliciously." Then, again, on p. 264, he repeats the same proposition. Holroyd, J. is more direct on the necessity for the allegation of the malice. He says: "Now, if a thing in itself mischievous to the public be wrongfully done, that is an indictable offence. It is not necessary to aver in such an indictment any direct malice, because the doing of such an act without any excuse is indictable." Again, on p. 267, he says: "If the matter published was in itself mischievous to the public, the very act of publishing is *prima facie* evidence to show that it was done *malo animo*; for when a publication having such an injurious tendency is proved, it is intended to have been done with a malicious intention; because the principle of the law is, that a party must always be taken to intend those things and those effects which naturally grow out of the act. If, therefore, the effect naturally flowing from the act of publishing the libellous matter in this case was mischievous to the public, it follows that the judge was bound to tell the jury that malice was, by law, to be inferred, and so forth. I would only observe that the words "prove at the trial" must be used in the sense that the learned counsel for the defendant used them, that it is necessary to prove it in the sense that facts from which the law will infer malice must be proved. That case was followed by the case of *Bromage and another v. Prosser* (4 B. & C. 247), decided in 1825, an action for slander; but on the point we are considering no difference exists between that and the present case. Bayley, J. in that case said: "If in an ordinary case of slander (not a case of privileged communication) want of malice is a question of fact for the consideration of the jury, the direction was right; but if in such case the law implies such malice as is necessary to maintain the action, it is the duty of the judge to withdraw the question of malice from the consideration of the jury; and it appears to us that the direction in this case was wrong." A little later on he says: "Malice in common acceptation means ill-will against a person, but in its legal sense it means a wrongful act, done intentionally, without just cause or excuse." This is so laid down in *Mercer v.*

*Sparks*, which is reported in Noye's Rep. p. 35, and also in Owen's Rep. at p. 51. Those are the authorities; and the last case that it is necessary to refer to is *Heyman v. The Queen* (28 L. T. 162; L. Rep. 8 Q. B. 102; 12 Cox C. C. 383), where it is clearly laid down that there is no difference in the principle applicable in civil and in criminal pleadings that defective allegations contained therein are corrected by the verdict. The general principles in civil and in criminal proceedings are substantially the same. I come, therefore, to the conclusion that this indictment is good, and that it would be monstrous if it could not be so held. To go further, the indictment begins with a statement that the libel was published unlawfully, and, considering the question as we are now doing after the verdict of the jury, even as an imperfect averment, I think that such imperfection would be cured by the verdict. I do not base my judgment upon that ground, however, but on the ground that the indictment is good, notwithstanding the omission of the word "maliciously"; that it is not an indictment under the statute, but that the statute is merely an enjoining of what punishment is to follow upon a conviction for the common law offence. On these grounds I think that the conviction must stand.

POLLOCK, B — I concur in thinking that this conviction is good upon the ground that the indictment is good in law. My Lord has pointed out very clearly that this is not an indictment founded upon any particular section of an Act of Parliament; and we have only to bear in mind that the rules which are applicable to cases of libel are the same both in civil and in criminal proceedings. It may be generally observed that, where an action will lie for that which is a libel, an indictment may charge the document in question as a libel; and where that is so the person who publishes that libel brings himself within the criminal law without its being necessary to show any malice. That has been followed out by all the authorities. As early as the time of Elizabeth we find a case in which it was held that where words are scandalous they are *eo ipso* malicious, and it is therefore unnecessary in an action to allege that they were spoken maliciously (Vin. Abr. 533). In *Haire v. Wilson* (9 B. & C. 645), where the learned judge who tried the case directed the jury to find for the plaintiff if they thought the defendant intended to injure him by publishing the libel in question otherwise for the defendant; and Lord Tenterden, C.J., commenting on that when the case came before the Court of King's Bench, said this: "The judge ought not to have left it as a question to the jury, whether the defendant intended to injure the plaintiff, for every man must be presumed to intend the natural and ordinary consequences of his own act. If the judge thought the tendency of the publication injurious to the plaintiff, he ought to have told the jury it was actionable, and that the plaintiff was entitled to a verdict. That was the view adopted and

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—  
1895.  
—  
Practice—  
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Necessary  
averments—  
Inference of  
law—  
Maliciousness  
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tion.

**Rae.**  
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**MUNSLow.**  
 —  
 1895.  
 —  
*Practice—*  
*Indictment—*  
*Defamatory*  
*libel—*  
*Necessary*  
*averments—*  
*Inference of*  
*law—*  
*Maliciousness*  
*of publica-*  
*tion.*

enforced in *Bromage v. Prosser* (4 B. & C. 247) and some of the other cases. Can it then be said that an indictment must aver that which is an inference of law? It is unnecessary to cite any other cases to show that this is not so. For myself, I think that where sufficient facts are proved it is for the judge to make a statement that the jury are to infer that there was malice, unless they are satisfied from the facts that the publication was not malicious. I think that this indictment is good, and that the conviction must therefore be confirmed.

WILLS, J.—I am of the same opinion, and am not sorry that the question has been seriously discussed. It is of considerable importance in criminal matters that the offence should be stated in clear and legal language, so that that looseness of thought which creeps into the consideration of civil cases should be provided against as much as possible. The expression libel and the expression publication exclude, in my opinion, what the books sometimes call accidental publication; because, as I understand the case of *Emmens v. Pottle* (*ubi sup.*), that which is called an accidental publication is no publication at all. In *Lord Abingdon's* case (1 Esp. 225) Lord Kenyon treats it as a case of inadvertent publication. But Lord Esher's view in *Emmens v. Pottle* is, to my mind, more technically correct; but, whichever you follow, the notion of its being necessary to prove that the publication was malicious is excluded. It seems to me that every case is excluded in which the law would not necessarily attach the epithet of malice to the publication of the document. If that is so, the allegation of malice cannot be less effectively made by not being expressly alleged. If the inference is inevitable, it is sufficient, and I therefore think that this conviction is good.

CHARLES, J.—I am also of opinion that this indictment was good, and I have nothing to add to the reasons given by my Lord and my learned brothers. For myself, I may add that I am of opinion that, even if the indictment was bad, its insufficiency has been entirely cured by the verdict.

LAWRANCE, J.—I entirely agree.

*Conviction affirmed. (a)*

Solicitors for the prosecution, *Wood and Bourne*, of Southam.  
 Solicitor for the defendant, *Saunderson*, of Warwick.

(a) Upon application being made on behalf of the prosecution for an order directing payment of the costs of the prosecution by the defendant, Lord Russell, C.J. said: "I understand that it is not necessary to make any order. The costs follow as a matter of course."

## QUEEN'S BENCH DIVISION.

*Wednesday, March 27, 1895.*

(Before CAVE and WRIGHT, JJ.)

PHYTHIAN (app.) v. BAXENDALE (resp.). (a)

*Highway—Cart and horses standing still—"Passing upon highway"—Driver leaving horses—Liability of driver to penalty—Highway Act, 1835 (5 & 6 Will. 4, c. 50), s. 78.*

*The Highway Act, 1835, provides by sect. 78 that if the driver of any carriage negligently or wilfully be at such distance from such carriage, or in such a situation whilst it shall be passing upon such highway, that he cannot have the direction or government of the horses drawing the same, he shall be liable upon conviction to forfeit a sum not exceeding five pounds.*

*The appellant, the driver of a farm waggon, was convicted under the above section, it appearing from the evidence that when he was driving along a highway he stopped his horses and went into a public-house. The horses remained standing outside the house while the appellant was inside, and it was contended on his behalf that, as the horses were standing still, the cart was not passing upon the highway :*

*Held, that the conviction was right.*

CASE stated by justices.

The justices found as facts, that the appellant was, on the day and at the place in question, the driver of a laden lorry or farm waggon drawn by two horses, on a journey from Halewood to Liverpool; that he stopped his horses and left them standing on the highway and went into a public-house, or, at all events, to the door of it (a distance of ten yards or thereabouts from the waggon); that he returned to his horses, started them, and went on his way; that he was away from his horses for ten minutes, and whilst at the house he had not the direction and government of the horses. It was proved and admitted that the lorry and horses did not obstruct the passage of the highway.

*Temple Franks* for the appellant.—It is submitted that the decision of the justices was wrong. The provision in the section under which the appellant has been convicted applies only to vehicles when they are moving. There is another provision dealing with vehicles when they are stationary. The justices do

(a) Reported by W. H. HORSFALL, Esq., Barrister-at-Law.



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Highway—  
Carts and  
horses stand-  
ing still—  
“Passing  
upon high-  
way”—  
Driver leaving  
horses—  
5 & 6 Will. 4,  
c. 50, s. 78.

not find that the appellant's cart in any way obstructed the traffic along the highway. This is a penal statute, and as such must be construed strictly.

*Mattinson*, for the respondent, was not called upon.

CAVE, J.—I am of opinion that the decision of the justices was right. The cart in question was passing upon the highway within the meaning of the section.

WRIGHT, J. concurred.

*Appeal dismissed.*

Solicitors for the appellant, *J. O. Swift and Co.*, St. Helens.

Solicitors for the respondent, *Ridsdale and Son*.

## QUEEN'S BENCH DIVISION.

*Friday, March 29, 1895.*

(Before CAVE and WRIGHT, JJ.)

REG. v. JUSTICES OF DURHAM; *Ex parte* NEWTON. (a)

*Practice—Appeal to quarter sessions—Recognisance—Court before which recognisance may be taken—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 31.*

*An appellant from a Court of summary jurisdiction, under the Summary Jurisdiction Act, 1879, sect. 31, may enter into the required recognisance before any Court of summary jurisdiction, and need not necessarily do so before the Court which convicted or made an order upon him, or before a Court acting for the same county, borough, or place.*

THIS was an order *nisi* calling upon the justices for the county of Durham to show cause why a writ of *mandamus* should not issue directed to them commanding them to enter or cause to be entered continuances from session to session to the next general quarter sessions upon the appeal of one William Newton.

On the 8th day of November, 1894, at the Houghton-le-Spring Petty Sessions in the county of Durham, an order was made upon William Newton.

(a) Reported by W. H. HORSFALL, Esq., Barrister-at-Law.

Within seven days of the order being made William Newton gave notice of appeal against the said order to the next court of quarter sessions for the county of Durham, and served such notice upon the said M. J. Merrington and the clerk to the justices for the petty sessional division of Houghton-le-Spring.

William Newton, who resided at Haltwhistle, in the county of Northumberland, within three days of the notice of appeal having been given, attended with one surety before a justice of the peace acting for the Haltwhistle petty sessional division of the county of Northumberland, and, after having told the justice the facts of the case, entered into a recognisance to prosecute the said appeal.

A copy of the notice of appeal and the recognisance were then duly sent to the clerk of the peace for the county of Durham, and the appeal was duly entered.

The Court of Quarter Sessions for the county of Durham refused to hear the appeal on the ground that the recognisance had not been properly entered into.

*Scott Fox*, for the respondent, M. J. Merrington, showed cause.—It is submitted that the decision of the Court of Quarter Sessions was correct, and that the recognisance was not properly entered into; it should have been entered into before the court which made the order upon the appellant. The respondent had no notice that the appellant was about to enter into a recognisance. The court, knowing the facts of the case, should take the recognisance so that a proper amount might be fixed.

*Strachan*, for the appellant, Newton, in support of the order.—It is not necessary for the appellant to go before the court making the order upon him to enter into the recognisance. The section says that he shall enter into it “before a court,” which clearly means any court. In other parts of the section courts for the same county are referred to, which point to a distinction in this case.

*CAVE, J.*—I am of opinion in this case that the *mandamus* must go. It is a *mandamus* to justices to hear an appeal in certain bastardy proceedings which came before them in the ordinary course at quarter sessions. The parties, it appears, were ready for the appeal to be heard when an objection was taken on behalf of the mother of the illegitimate child that the recognisance, which had been entered into by the alleged putative father of the child, had not been taken before the court which made the order on the man. This objection was upheld. It was not suggested that the man was unable to pay the costs if he were unsuccessful in the appeal, but the objection was used as a means of getting the appeal dismissed without the case being heard upon its merits. The statute which governs these proceedings is the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), which provides by sect. 31 that where any person is authorised by this Act, or by any future Act, to appeal from the conviction or order of a court of summary jurisdiction to a court

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NEWTON.

1895.

Practice—  
Appeal to  
quarter  
sessions—  
Court to  
take recogni-  
sances—  
42 & 43 Vict.  
c. 49, s. 31.

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v.  
BIRCH.  
—  
1895.  
—  
Hackney  
carriage—  
Defacing  
licence—  
Entries in  
columns—  
Justices'  
jurisdiction—  
Compensation  
—Matter of  
complaint—  
6 & 7 Vict.  
c. 86, ss. 8, 22.

*date, but, in the fourth column, he put the two dates when N. quitted B.'s service, and, in addition, signed his own (the manager's) name.*

*N. thereupon took out a summons against B. for unlawfully defacing his licence, and produced evidence that the entries in the fourth column amounted to a "chairmark," and prejudiced him in his business. No evidence of special damage was given: Held, that sect. 8 of the Hackney Carriage Act, 1843, had not been complied with, and that there had been a defacement of the licence in the fourth column, and that this was a matter of complaint within sect. 22 of the Act, and that the magistrate had, therefore, jurisdiction to order compensation.*

**T**HIS was a case stated by one of the metropolitan police magistrates.

Thomas Norris (the appellant) was a licensed cabdriver, and John Manley Birch (the respondent) was a cab proprietor. On the 3rd day of August, 1894, a summons came on for hearing before the magistrate at the Westminster Police Court, whereby the respondent was charged that, being the proprietor of a hackney carriage, and employing as driver of the said carriage the said Thomas Norris, he did unlawfully deface his licence.

The respondent did not appear to the summons either personally or by a solicitor. A person giving the name of Louis Johnson appeared, and said that he was, when the acts complained of were done, foreman of a cab yard, occupied by the respondent.

The appellant gave evidence that he entered the respondent's service on the 16th day of March, 1894, and that he left it on the 2nd day of May, 1894, and that he applied to the respondent for his licence to be returned to him on the 26th day of July, 1894. He admitted that there were some breaks in the said service.

The magistrate found, as a fact, that the following statements made in the entries upon the licence were, as a fact, true.

The licence of the appellant was, on his application, returned to him by the respondents, marked as follows :

Entries as required by the Act 6 & 7 Vict. c. 86, s. 8, and by 32 & 33 Vict. c. 115, and the owner, made in pursuance thereof, incorporating the said requirements, are to be made by proprietors in the respective columns beneath :

Name of proprietor : J. M. Birch.

Address of proprietor : 27, Great Peter-street, Westminster.

Date when within licensed person entered proprietor's service : 16th day of March, 1894.

Date of quitting service : 23rd day of March, 1894, 2nd day of May, 1894.—Louis Johnson.

The magistrate further found as a fact that the two first rows of the above marking were printed on the licence, as they are on all cabdrivers' licences, and the third row (being the first space provided to be filled up by the respondent) was written by the said Louis Johnson acting for the respondent.

The appellant complained that the writing in the last column of the written marking was a chairmarking of his licence, and would prejudice his chance of obtaining employment from other cab proprietors. The appellant did not allege that he had as a fact produced the said licence to any other cab proprietor asking for employment and had been refused, but he called two cab proprietors who gave evidence that they should refuse employment to any driver producing a licence so marked. They said that only one date ought to appear there, and that anything appearing in the last column except the date is in the cab trade supposed to be against a man's character.

The magistrate found as a fact that the writing in the last column was, though in every respect true, so written as to prejudice the appellant with other cab proprietors to the knowledge of the said Louis Johnson, the agent for the respondent.

It was contended for the appellant that the above facts disclosed a matter of complaint between the respondent and the appellant within 6 & 7 Vict. c. 86, s. 22, and the magistrate was asked to deal with it under that section.

The magistrate was of opinion that the above facts did not disclose such a matter of complaint, and that the appellant had given no evidence of any damage or loss upon which he could assess compensation, and he therefore dismissed the summons.

The question for the opinion of the Court was whether the magistrate was right in either of the above opinions; if right in either, the said summons was to stand dismissed; if wrong in both, the case was to be remitted to him to be further dealt with as the Court should direct.

The Hackney Carriage Act, 1843 (6 & 7 Vict. c. 86) provides as follows :

8. . . . and on every licence for a driver or conductor the registrar shall cause proper columns to be prepared in which every proprietor employing the driver or conductor named in such licence shall enter his own name and address and the days on which such driver or conductor shall enter and shall quit his service respectively; and in case any of the particulars entered or indorsed upon any licence in pursuance of this Act shall be erased or defaced every such licence shall be wholly void and of none effect; . . .

22. . . . it shall be lawful for any justice of the peace to hear and determine all matters of complaint between any proprietor of a hackney carriage . . . and the driver or conductor of the same, and to order payment of any sum of money that shall appear to be due to either party for wages or for the earnings in respect of any such carriage . . . and to order such compensation to either party in respect of any other matter of complaint between them as to such justice shall seem proper.

*Morton Smith*, for the appellant.—The magistrate's decision is wrong. There was a defacing of the document: (*Hurrell v. Ellis*, 2 C. B. 295; 15 L. J. 18, C. P.; *Rogers v. Macnamara*, 14 C. B. 27; 23 L. J. 1, C. P.) The two dates in the fourth column implied that the driver had been out on the then recent cab strike, and that would prejudice his chance of being employed. [KENNEDY, J.—Suppose there had been two employments?]

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*Hackney carriage—**Defacing**licence—**Entries in columns—**Justices'**jurisdiction—**Compensation**—Matter of**complaint—**6 & 7 Vict.**c. 86, ss. 8, 22.*

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Hackney  
carriage—  
Defacing  
licence—  
Entries in  
columns—  
Justices'  
jurisdiction—  
Compensation  
—Matter of  
complaint—  
6 & 7 Vict.  
c. 86, ss. 8, 22.

Then the dates of both should have been entered. But here there is only one date of a commencement of employment, but two dates indicating his quitting. It was stated at the hearing before the magistrate that the effect of these two dates in the fourth column would be to the prejudice of the driver. Nothing, except the date of leaving service, is to be entered in this column, and all else is prejudicial to the holder of the licence. But here there was further the signature "Louis Johnson."

*W. B. Campbell* (*G. P. Taylor* with him) for the respondent.—

The facts of the case do not show a complaint within sect. 22. If the cab proprietor puts any marks on the licence without authority, no doubt an action would lie against him, but that is not the case here. It is submitted that what has been done here is really no more than a substantial compliance with the statute. It is admitted that the driver left the employment on two occasions, and, therefore, both dates must be given in order to fulfil the requirements of the Act, and if this should, in fact, prejudice the holder of the licence, the employer is not responsible, because it is done in compliance with what the Act requires. The mere fact that there is only one date in the third column cannot be said to amount to a defacement. Neither can the signature of the agent, which is a matter of common usage, amount to a defacement. In any case, this is not a "matter of complaint" contemplated by the section.

LAWRANCE, J.—I think that the terms of sect. 8 of the Hackney Carriage Act of 1843, requiring that the proprietor shall enter in the proper columns on the licence the days on which the driver enters and quits his service, have not been complied with. If he had entered only the dates of the last entry and quitting by the driver in his service, he would have complied with what is necessary under that section. But here the date of the driver's first entering service and the two dates of his leaving such service were entered on the licence, but not the date of the second entry into service. It is not necessary to decide whether if that date had been given the case would have been different, and whether that would have amounted to a defacing of the licence, or whether there should be only one date of quitting service given in the fourth column. The writing on the licence, however, did not state the whole truth, and, in addition to the date in the fourth column, there is the signature of "Louis Johnson," and this was not a compliance with the section, and amounts to a defacing of the licence. Evidence was called on behalf of the driver to show that the effect of this, and also of a second date in that column, would be to prejudice him in the eyes of other cab proprietors and prevent him from obtaining employment from them. It was contended that this was not a "matter of complaint" within sect. 22 of the Act, and that the magistrate had no jurisdiction to entertain the case. [The learned Judge then read sect. 22.] I think the evidence clearly showed a cause of complaint within the intention of this

section, and that the magistrate had jurisdiction to entertain the claim. I think also there was evidence of damage or loss upon which he could assess compensation, and that he ought to have acted on it.

KENNEDY, J.—The magistrate found, as a fact, that if anything, though in every respect true, appears in the fourth column of the licence, with the exception of the date of the determination of the employment, it is prejudicial to the driver's character so far as obtaining employment from other cab proprietors. The Hackney Carriage Act requires that the owner shall enter in the first and second columns his own name and address respectively, and in the third and fourth columns the dates of the commencement and determination of the employment of the driver. Now do these columns comply with the requirements of sect. 8, or does more than is so required appear there? In the fourth column there are two dates and the name "Louis Johnson." The appearance of the two dates is explained to us by the fact that there was a temporary break in the driver's employment, although we do not find in the third column any date to show when the second employment began. Therefore, it is a case in which something not required by the statute is written. I will not go so far as to say that the mere fact that two dates appear in the fourth column and only one in the third column is sufficient to amount to a defacement of the licence, merely because certain persons in the trade choose to regard it as a bad mark. But this case goes further than that. Here, in addition to the two dates, there is the signature "Louis Johnson" in the fourth column. This is not required by the Act, and is a non-complying with the section, and ought not to be there, and is, therefore, a defacing of the licence. As to whether the magistrate had jurisdiction, I have no doubt that this case falls, and was intended to fall, within sect. 22, and as there was evidence that the driver was prejudiced thereby in his chance of getting further employment from other cab proprietors, I am of opinion that this appeal must succeed, and the case go back to the magistrate for him to assess the compensation the driver is entitled to.

Solicitor for the appellant, *W. Holloway*.

Solicitor for the respondent, *T. Duerdin Dutton*.

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*Hackney carriage—  
Defacing licence—  
Entries in columns—  
Justices' jurisdiction—  
Compensation—  
Matter of complaint—  
6 & 7 Vict. c. 86, ss. 8, 22.*



## QUEEN'S BENCH DIVISION.

*Jan. 16 and 17, 1895.*

(Before LAWRENCE and KENNEDY, JJ.)

SCOTT (app.) *v.* BARING (resp.) (a)*Justices—Jurisdiction—Bonâ fide claim of right.*

*The appellant was summoned for that he, being an unauthorised person, did dig and take turf sods and loam from Banstead Common contrary to one of the bye-laws. At the hearing it was proved that the appellant was authorised by the bailiff of the lord of the manor, and that the right had been exercised for several years. The case of Robertson v. Hartopp (62 L. T. Rep. 585), which was an action brought on behalf of the tenants of the manor of Banstead to restrain the lord from inclosing and digging up the waste so as to interfere with the rights of common, was cited, and the justices, having regard to that decision, found as a fact that the appellant was an unauthorised person within the meaning of the bye-laws, and convicted him :*

*Held, that, there being a bonâ fide claim of right set up which was not obscure or impossible in law, the justices were estopped from inquiring into the merits of the claim ; that their jurisdiction was ousted ; and that they had no right or power to make further inquiry, and ought not to have been influenced by the judgment in Robertson v. Hartopp.*

## CASE stated by justices.

At a petty sessions, held at Epsom on the 30th day of July, 1894, an information was preferred by the respondent, the Hon. Francis Henry Baring (chairman of the Banstead Commons Conservators), against the appellant Stephen Scott, under the fourth bye-law of the Banstead Commons Conservators, made in pursuance of the Metropolitan Commons (Banstead) Supplemental Act, 1893 (56 & 57 Vict. c. cvii.), charging that the appellant, on the 8th and 27th day of June, 1894, at the parish of Banstead, then being an unauthorised person, did unlawfully cut, dig, and take turf sods and loam from and disturb the surface of Banstead Common, contrary to the bye-law. On the hearing of the information it was admitted that the appellant

(a) Reported by HENRY LEIGH, Esq., Barrister-at-Law.

did cut and dig turf sods and loam, and that he was not authorised by the conservators to do so; but it was contended that, inasmuch as the appellant was duly authorised to do so by the owners of the soil of the commons, who had for years past cut and dug turf sods and loam, and had authorised other persons so to do, he was not an "unauthorised person" within the definition of the term "unauthorised person" contained in the first of the bye-laws. Evidence was given by the bailiff for certain owners of the soil of Banstead Heath that for fifteen years such owners had exercised the right of cutting turf and digging loam, and that for about five years he had authorised the appellant to do so on the part of the owners.

By the conservators' first bye-law the term "unauthorised person" means any person, except a person for the time being duly authorised by the conservators, in writing, or a person acting legally by virtue of some estate or interest, or in the legal exercise of some right saved by the scheme for the establishment of local management with respect to Banstead Downs and Heath, and confirmed by the aforesaid Act of 1893, in, over, or affecting the commons or some part thereof, or a person duly authorised by a person entitled so to act as aforesaid.

The fourth bye-law provided that "no unauthorised person shall cut, dig, take, or sell any turf, sods, gravel, clay, peat, loam, sand, or other substance from or disturb the surface of the Commons." The case of *Robertson and others v. Hartopp and others* (62 L. T. Rep. 585; 43 Ch. Div. 484) was referred to, and two Orders, dated the 11th day of April, 1889, and the 4th day of February, 1890, of the Court of Chancery in respect of that action, were put in on behalf of the respondent and read.

On behalf of the appellant, it was objected that these orders were not evidence against him, as he was not a party to the proceedings in the aforesaid case, and it was contended that, as the appellant claimed a right to dig the loam, the jurisdiction of the justices was ousted. On behalf of the respondent, it was contended that the appellant was an "unauthorised person," on the grounds (1) that he had not been authorised by the conservators; (2) that he had no estate, interest, or right in the commons, and was not authorised by any person acting legally by virtue of some estate, interest, or right therein.

The justices found, as a fact, that the appellant was an unauthorised person within the meaning of the bye-laws, and duly convicted him.

The question of law for the opinion of the Court was, "whether the appellant was an unauthorised person within the meaning of the bye-laws of the Banstead Commons Conservators, he having been authorised to dig and take away loam by the owners of the soil of Banstead Heath as hereinbefore mentioned."

If the Court should be of opinion that the conviction was legally and properly made, and that the justices did not exceed

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Justices—  
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their jurisdiction, and that the appellant was liable, the conviction was to stand; but if the Court should be of opinion to the contrary, then the conviction was to be quashed.

*Channell*, Q.C. (*Cartmell* with him) for the appellant.—The alleged offence here was under a bye-law made in pursuance of the Metropolitan Commons (Banstead) Supplemental Act 1893. This was merely an Act for the regulation of the common, and it was not intended to take away the rights of the commoners. If the right that the appellant claims is one that can exist in law, the magistrates cannot go into it without dealing with a question of title, which they have not jurisdiction to do. In order to deal with the claim they must find on proper evidence that the claim is not *bonâ fide*, which they were unable to do here. The conviction, therefore, was wrong.

*Cluer* for the respondent.—The magistrates were right in convicting and in the course they adopted as regards the claim of the appellant. They had to see whether his contention was a reasonable one. The claim made was not sufficient to oust their jurisdiction: (*Watkins v. Major*, 32 L. T. Rep. 352; L. Rep. 10 C. P. 662.) The bye-law is authoritative, and the magistrates must be guided by it. In *Robertson v. Hartopp* (62 L. T. Rep. 585; 43 Ch. Div. 484), which was an action by the tenants of the manor to restrain the lord of the manor from digging and removing the soil so as to interfere with their rights of common, the whole point was that there was not sufficiency of common, and it was held that the lord ought to be restrained from doing any acts which would interfere with the commoners' rights. That decision is binding here, and the magistrates were bound to act on it.

*Channell*, Q.C. in reply.—It is not intended to give jurisdiction to the magistrates by this bye-law, and they cannot determine the right of cutting turf. If it purports to give such power, it is a bad bye-law.

LAWRANCE, J.—In this case the jurisdiction of the magistrates is ousted. There was a *bonâ fide* claim of right, which might exist in law; and the magistrates had no right and no power to inquire further if, when it was once made out, it was a *bonâ fide* claim. The question depends upon whether the judgment in *Robertson v. Hartopp* (*ubi sup.*) was so conclusive as to justify the magistrates in coming to the conclusion that this claim could not exist in law. That it was a *bonâ fide* claim is not disputed; nor that, if *Robertson v. Hartopp* had not been decided, the magistrates' hands would have been stayed and their jurisdiction ousted. Then comes the question whether that judgment ought to lead them to the conclusion that there could be no such claim as that set up by the appellant. The appellant assumed to be an "authorised person," and that he came within the exception from "unauthorised persons;" that is, "any person except a person (I am leaving out immaterial words) 'duly' authorised by the conservators in writing or a person acting legally by

virtue of some estate or interest, or in legal exercise of some right saved by the said scheme in, over, or affecting the commons or some part thereof, or a person duly authorised by a person entitled so to act as aforesaid." The appellant claimed to be authorised by the agent of the lord of the manor, the owner of the soil of the manor; and at the hearing the agent was called, and he said: "I did authorise him. I did sell him the loam at 4s. a load, and he took it and sold it for what he could get." The agent also said that he had never been stopped digging turf or loam by anyone, and that that had gone on from 1877 up to the present time. That was the evidence given at the trial before the magistrates. Then it was argued that the judgment in *Robertson v. Hartopp* was binding on the magistrates, and shows that no person is entitled to act as the appellant did in the present case. That raises the very point. In order to see whether the appellant is right or not, and whether this case is on all-fours with *Robertson v. Hartopp*, the magistrates would have to hear evidence to decide the very point; and that is, in my judgment, a thing which they were not entitled to do. Then it is said that the onus was on the lord of the manor. I do not care on which side the onus was. That was a matter over which the magistrates had no jurisdiction whatever. If they had so acted, they would have been exceeding their jurisdiction altogether; but in this case they took a much shorter course. They looked on *Robertson v. Hartopp* as establishing that any person was prevented by the judgment from illegally digging turf or loam on the common, and that the appellant must be guilty of the charge made against him. As I said before, there was a *bonâ fide* claim of right. He claimed to be "a person authorised by a person entitled to authorise him to dig turf there," and that was a *bonâ fide* claim of right. Therefore, the case could not have been decided without the magistrates making an inquiry in the matter, which they had no right or jurisdiction to make; and, therefore, their jurisdiction was ousted, and the conviction was wrong. Our judgment should be for the appellant.

KENNEDY, J.—I have come to the same conclusion. The magistrates ought to hold their hands when there is a *bonâ fide* claim of right; yet, if the claim, though an honest claim, is absurd and impossible in point of law, then they ought to deal with the case that is before them. Here the magistrates have proceeded, although a claim of right was set up honestly and *bonâ fide*. Was the right absurd or impossible in point of law, or such a right that, without going into evidence, its impossibility would be patent to everybody? The reason for saying in this case that the act complained of was an act which could not, although a claim of right was set up, be treated as a reasonable claim, is that there was a judgment of Stirling, J., and a further judgment of the Court of Appeal, which were judgments in an action brought by a plaintiff against one at any

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rate of those persons whose agent was the person who gave authority to the person charged here, and which the person believed to be rightly given him, but which in fact it is said could not have been rightly given him. But that judgment cannot be treated as proof that there could be no reasonable claim of right here in point of law. That case decided that, under the circumstances there proved, the persons in the position of Sir John Hartopp, lord of the manor of Banstead, had no right to do certain acts of inclosure, and also to dig and remove part of the soil of the waste, because these acts interfered with the just rights of the commoners. It is possible, at any rate, to conceive circumstances under which those acts might have been lawfully done; but when an honest claim of right is set up, it is not for the magistrates to entertain an inquiry whether the claim is substantial or not. If it is not on the face of it an impossible or an unreasonable claim, then the magistrates are estopped from entertaining any discussion in the case. The magistrates having once found that the act was done under a *bonâ fide* claim of right, ought to have held their hands. I agree that our judgment should be for the appellant, with costs.

*Appeal allowed.*

Solicitors for the appellant, *Lawrence, Graham, Gray, and Sutherland.*

Solicitors for the respondent, *Horne and Birkett.*

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## QUEEN'S BENCH DIVISION.

*Thursday, March 28, 1895.*

(Before CAVE and WRIGHT, JJ.)

IRONS (app.) v. VON TROMP (resp.). (a)

*Sale of Food and Drugs Act 1875 (38 & 39 Vict. c. 63), ss. 6, 25  
—Article not of quality demanded—Invoice and label on article  
supplied to seller—Warranty.*

*Neither an invoice which contains a description of an article sold,  
nor a label affixed to such article, even though it contains the  
words "warranted genuine and pure," can of itself constitute  
a written warranty within the meaning of sect. 25 of the Sale of  
Food and Drugs Act, 1875.*

CASE stated by justices of the peace acting for the division of  
Handsworth, in the county of Stafford.

(a) Reported by W. W. ORR, Esq., Barrister-at-Law.

At a petty sessions, holden at Handsworth, on the 12th day of October, 1894, a summons was heard on an information by the respondent, an inspector under the Sale of Food and Drugs Acts, against the appellant charging that the appellant "on the 24th day of August, 1894, at the parish of Handsworth, did sell to one Toy, to the prejudice of the purchaser, a certain article of food, to wit, ground ginger, which was not of the nature, substance, and quality of the article demanded, the same being adulterated with at least 90 per cent. of exhausted or spent ginger, contrary to statute."

The charge was laid under the 6th section of the Sale of Food and Drugs Act, 1875, and the justices convicted the appellant, and fined him in the sum of 1*l.* and 1*l.* 13*s.* costs.

The appellant gave evidence that he had purchased the ginger as and for genuine ginger made up in four canisters of 2*lb.* each, from one of which the purchaser was served, and that he received in connection with the purchase of it an invoice wherein the same was described as "ground ginger," and that each of the canisters containing the substance delivered to him by his vendor had affixed on the outside a label upon which were printed the words "Warranted Genuine Pure Ground Ginger."

The Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), provides :

Sect. 25. If the defendant in any prosecution under this Act prove to the satisfaction of the justices or court that he had purchased the article in question as the same in nature, substance, and quality as that demanded of him by the prosecutor, and with a written warranty to that effect, that he had no reason to believe at the time when he sold it that the article was otherwise, and that he sold it in the same state as when he purchased it, he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he shall have given due notice to him that he will rely on the above defence.

*Montague Lush* for the appellant.—The case turns on sect. 25 of the Act, and having regard to that section there are two things in the present case which import a warranty. The invoice imports a warranty, because it describes this stuff in the tin as ground ginger. The appellant bought a tin which purported to contain ground ginger, and as between the appellant and Kidson, from whom he purchased it, that was a warranty; it was in fact a warranty that what we were buying was ground ginger, so that upon the invoice alone the present case is brought within the decision in *Laidlaw v. Wilson* (1894) 1 Q. B. 74). It was a sale to the appellant by description, and, if so, the provisions of sect. 25 are satisfied. Again, there is another point which makes this a much stronger case than *Laidlaw v. Wilson* (*ubi sup.*). Here there was a printed warranty on the label, and as, by sect. 20 of the Interpretation Act, 1889, writing includes printing, there was, therefore, upon the label a written warranty within the meaning of the section, as well as within *Laidlaw v. Wilson* (*ubi sup.*). The case also of the *Farmers and Cleveland Dairies Company Limited v. Stevenson* (63 L. T. Rep. 776; 60 L. J. 70, M. C.) shows the effect of a label as importing a warranty.

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*H. D. Green*, Q.C., for the respondent, was not called upon.

CAVE, J.—This case is one in which the magistrates have convicted on the ground that there was not a written warranty within sect. 25 of the Act which provides as follows: [His Lordship read the section and proceeded:] Therefore, what the defendant had to prove was that he had purchased the article as the same in nature, substance, and quality as that demanded of him, and with a written warranty to that effect, and that he sold it in the same state as when he purchased it. He had to prove these two things. The magistrates held that there was no written warranty, and I think they held so rightly. The case of *Laidlaw v. Wilson* (*ubi sup.*) has been referred to as governing this case, and it does govern it, but not in the sense contended for on behalf of the appellant. There the facts were that the purchase was made under a contract which provided that the article sold was pure lard, and Charles, J., in his judgment, says: "In my judgment it is not necessary that the word 'warranted' should be actually used. To my mind it is enough if the language of the document imports a warranty, and shows an intention on the part of the vendor to warrant. It was, however, said on the part of the appellant that there were two cases which were opposed to that view. The first was *Rook v. Hopley* (38 L. T. Rep. 649; 3 Ex. Div. 209). But that case is distinguishable on two grounds. In the first place the statement there was that the thing sold was lard simply; there was no statement of its purity." Now, I need not go further than that. The learned judge not only gives the ground of his own decision that the contract was for pure lard, but he also discusses another case—the case of *Rook v. Hopley* (*ubi sup.*)—and considers it as not binding, because the language used there was that the thing sold was lard simply with no statement as to its quality. In the present case the magistrates declined to look at the invoice as showing what the contract was, and I am of opinion that they were right in so doing. No doubt there are some cases in which the invoice ought to be looked at, as in the case of the *Farmers and Cleveland Dairies Company v. Stevenson* (*ubi sup.*), where milk was delivered in churns with a label on each churn, stating that the milk was warranted genuine new milk. It was there held that the label did not contain a warranty, but merely identified the milk as part of the delivery. Not only so, but—as stated by Charles, J., in *Laidlaw Wilson* (*ubi sup.*)—the judgment of Lord Coleridge, C.J., in *Harris v. May* (12 Q. B. Div. 97) is to be supported on the ground that, although there was a written warranty, and although the man was convicted, yet he was properly convicted, because there was nothing in the nature of a label to show that the specific delivery of the milk then in question was made under the contract. Therefore, where there is a written warranty the label may be looked at for the purpose of showing that the delivery was a delivery under the written

contract; but where there is not a written warranty the label by itself does not import one. With that result agrees sect. 28 of the Act, and it seems to me therefore that the two sections of the Act and the cases all fit in together, and show that the appellant here was properly convicted.

WRIGHT, J.—I am of the same opinion. It was decided by the case of *Laidlaw v. Wilson* (*ubi sup.*) that the word “warranted” is not necessary; but there must be something more than simply passing on an article with a label upon it made by another person as was the case here. So far as I can express what I mean, a warranty must be some express, individual representation from the seller to the buyer, forming part of the contract and in writing, given in such a way as not necessarily to have reference to the provisions of the Act, but so as to be an essential term in the contract between the buyer and the seller.

*Appeal dismissed.*

Solicitors for the appellant, *Harper and Battcock*.

Solicitors for the respondents, *Hand, Blakiston, Everett, and Hand, Stafford*.

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## QUEEN'S BENCH DIVISION.

*Thursday, March 28, 1895.*

(Before CAVE and WRIGHT, JJ.)

GOSLING (app.) *v.* NEWTON AND EAGERS (resps.). (a)

*Thames Conservancy—Navigation of barge—Apprentice duly bound—Right of apprentice to act as lighterman—Right of apprentice to assist licensed lighterman as second hand—The Watermen and Lightermen Amendment Act, 1859 (22 & 23 Vict. c. cxxxiii.), s. 54—Bye-law 35 made thereunder—Bye-law 16 of the Thames Conservancy.*

*An apprentice properly bound for the period and in the manner prescribed by the Watermen Act, 1859, is an apprentice “qualified according to the Act,” within the meaning of sect. 54 of the Act, and he cannot be convicted under that section for acting as a lighterman without having a licence.*

(a) Reported by W. W. ORR, Esq., Barrister-at-Law.

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*Such apprentice may be a competent person to assist as second hand a duly licensed lighterman when navigating on the River Thames a barge of over fifty tons burden, within the meaning of the 16th bye-law of the Thames Conservancy, as the words in that bye-law "one man in addition," are satisfied by there being on board to assist an apprentice duly bound within the meaning of the Watermen Act and the bye-laws made thereunder.*

CASE stated by a metropolitan police magistrate.

Two summonses were taken out by one Gosling, the appellant, one under sect. 54 of the Watermen and Lightermen Amendment Act (22 & 23 Vict. c. cxxxiii.), against the respondent Newton, that he did, on the 9th day of October, 1894, on the River Thames off Milbank "unlawfully act as lighterman on board the barge *Sherwood* without having a licence so to do, contrary to the statute;" the other against the respondent Eagers, that he did, on the same day and at the same place, "unlawfully navigate the barge *Sherwood*, of above fifty tons burden, without having one man in addition on board to assist in the navigation and management of the same, contrary to the bye-laws of the Thames Conservancy."

These summonses were heard together before the magistrate on the 18th day of October, when the following facts were proved or admitted:

On the 9th day of October, 1894, the barge *Sherwood*, of above fifty tons burden, was being navigated on the River Thames, under the charge and control of the respondent, Edward Eagers, who was then a duly licensed waterman and a competent man within the meaning of the Watermen Act and the bye-laws made thereunder, and the bye-laws of the Conservators of the River Thames.

The respondent Eagers was at that time being assisted in the navigation of the barge by the respondent Newton, an apprentice, duly bound within the meaning of the said Act and nineteen years of age, although as a matter of fact he had only served a few weeks of his apprenticeship.

The respondent Newton was not qualified to act as a lighterman, nor was he qualified to hold a lighterman's licence within the meaning of the said Act.

The Watermen and Lightermen Amendment Act, 1859 (22 & 23 Vict. c. cxxxiii.), provides:

Sect. 3. The term "lighterman" shall mean any person working or navigating for hire a lighter, barge, boat, or other like craft within the limits of this Act.

By sect. 46, every freeman of the company, or widow of a freeman, may take apprentices for the purpose of having them instructed in the management of barges, lighters, boats, vessels, and other like craft, and no apprentice shall be bound for a period less than five years.

By sect. 47, every registered owner of a barge, lighter, or other like craft, having in his employ a freeman of the company, or a lighterman licensed as hereinafter mentioned, and actually employed in navigating the barge, lighter, or other like craft of his employer, may take such apprentices as he thinks fit; and by sect. 48, it shall not be lawful for any freeman, or widow of a freeman, or registered barge owner, to bind or take any person as an apprentice who shall be under the age of fourteen, or above the age of twenty years.

Sect. 52. It shall be lawful for all apprentices bound to a party authorised by this Act to take apprentices, to have or take the sole charge of any boat, barge, or other vessel, provided such apprentices shall have worked and rowed upon the said river as apprentices for the space of two years at the least, and upon their being found qualified to act, upon examination by the said court, and upon obtaining a licence from the said court, subject to an appeal to the Conservators of the River Thames, as is hereinafter provided with respect to licensed lightermen, &c.

Sect. 54. If any person, not being a freeman licensed in pursuance of this Act, or an apprentice, qualified according to this Act, to a freeman, or to the widow of a freeman of the said company (except as hereinafter is mentioned), shall at any time act as a waterman or lighterman, or ply or work or navigate any wherry, passenger boat, lighter, vessel, or other craft upon the said river, from or to any place or places, or ship, or vessel within the limits of this Act, for hire or gain (except as hereinafter is mentioned), every such person shall forfeit and pay for every such offence any sum not exceeding forty shillings: Provided always, that it shall be lawful for any person who shall obtain a licence as is herein provided, or is an apprentice qualified as herein provided, to work as a lighterman within the limits of this Act.

Sect. 55. Any person qualified as hereinafter mentioned, if desirous of working as a lighterman, may apply to the court of masters, wardens, and assistants for a lighterman's licence authorising him to work as a lighterman within the limits of this Act, &c.

Sect. 56. No person shall be deemed qualified for a lighterman's licence unless he is of the age of nineteen or upwards, is of good character, and has served an apprenticeship of five years at the least to some person authorised by this Act to take apprentices for the purpose of having them instructed as lightermen, and has, for a period of two years at least preceding his application been continuously engaged in working a barge, lighter, or other like craft within or through the limits of this Act.

Sect. 66. No barge, lighter, boat, or other like craft . . . shall be worked or navigated within the limits of this Act, unless there be in charge of such craft a lighterman licensed in manner hereinbefore mentioned, or an apprentice qualified as hereinbefore mentioned, &c.

By sect. 80 the court of masters, wardens, and assistants are empowered to make such bye-laws as they think proper for the government and regulation of lightermen and watermen, so that the same bye-laws be not inconsistent with the laws of the kingdom or with this Act, or with any of the bye-laws, rules, orders, or regulations made or to be made by the Conservators of the River Thames under the authority of the Thames Conservancy Act, 1857, or of any Act for the time being in force relating to the conservancy of the River Thames; provided that no such bye-laws shall be of any validity until they have been approved by the Conservators of the River Thames.

Bye-law 35, made in pursuance of the above section in July, 1860, and approved by the Conservators of the River Thames, provides:

That in all cases in which it may be necessary or requisite under such Act or these bye-laws or under the bye-laws of the Conservators of the River Thames that for the benefit of the public using the river in boats, barges, or vessels, two able and skilful

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persons shall be employed in the management and navigation of passenger boats at Gravesend, and in vessels of more than fifty tons burden, navigated on the river, one waterman or lighterman, licensed in manner provided by such Act and bye-laws, or an apprentice licensed to take the sole charge of craft, and an apprentice actually bound in manner provided by such Act, but not a person entered on liking for the purpose of being bound, shall be deemed and taken to be able and skilful persons within the meaning of such Acts and bye-laws respectively.

Bye-law 16 of the Thames Conservancy, made in pursuance of the Thames Conservancy Acts, and sanctioned by Her Majesty in February, 1872, provides :

All barges, boats, lighters, and other like craft navigating the river, shall, when under way, have at least one competent man constantly on board for the navigation and management thereof, and all such craft of above fifty tons burden shall, when under way, have one man in addition on board to assist in the navigation and management of the same with the following exceptions, &c.

It was contended on the part of the appellant that the respondent Newton must be a licensed freeman, or an apprentice licensed, qualified according to sect. 52 of the Act, to be entitled to act as a lighterman under the Act, and that bye-law 35 was inconsistent with the Act, and was therefore void and *ultra vires* ; and it was further contended that bye-law 16 under the Conservancy Acts must be taken to mean that the second hand on board to assist must be a person duly licensed under the provisions of the Watermen Act, and the appellant relied on *Perkins v. Gingell* (50 J. P. 277), as an authority for that proposition.

For the respondents it was contended that Newton was acting in accordance with the provisions of bye-law 35, he being an apprentice actually bound, and that therefore no offence had been committed within the Act, and that no offence had been committed under bye-law 16, as the words "one man in addition" were satisfied by having on board to assist an apprentice duly bound within the meaning of bye-law 35.

The learned magistrate took time to consider his decision, which he gave in favour of the respondents, being of opinion that bye-law 35 was not *ultra vires*, that no offence had been committed under sect. 54 of the Act, and that the interpretation to be given to the words "one man in addition" in bye-law 16 was to be found in the judgment of Huddleston, B., in *Goldsmith v. Slattery* (63 L. T. Rep. 273). He was also of opinion that the decision in *Perkins v. Gingell* (50 J. P. 277) was an authority in favour of the respondents, and he dismissed the summonses accordingly.

The questions for the opinion of the Court were : (1) Is bye-law 35 of the Watermen Act good and valid as regards the matter decided in this case ? (2) Is an unlicensed, but duly bound apprentice, as second hand on a barge of over 50 tons burden a sufficient compliance with the requirement of the 16th bye-law of the Thames Conservancy ?

*Gore-Browne* (*Cluer* with him) for the appellant.—The respondent Newton was not qualified to assist Eagers in the navigation



of the barge. Newton was summoned under sect. 54, and by that section, as he was not a licensed freeman, he was liable to be convicted unless he was an "apprentice qualified according to the Act." Now, "qualified" in this section must mean "qualified as hereinafter mentioned," that is, as specified in sects. 55 and 56, which view is confirmed by sect. 66; and an apprentice qualified according to the Act must at least be qualified under sect. 52, which points out that an apprentice can only take sole charge when he has served two years, and has obtained a licence as therein provided, which Newton had not done. Bye-law 16 of the Thames Conservancy expressly lays down that in such a case as the present there must be one "competent" man on board, and "one man in addition;" and by the decision in *Goldsmith v. Slattery* (63 L. T. Rep. 273), and *Perkins v. Gingell* (50 J. P. 277), "one man in addition" means one competent and skilful man in addition. This provision is not satisfied by the case of an apprentice, who has served only a few weeks of his apprenticeship, and who cannot be a competent man within the meaning of the bye-law. The decisions in those cases are clearly in favour of the appellant, though the dicta may be against him. If there be any discrepancy between this requirement of bye-law 16 and the provisions of bye-law 35, it is met by this observation, that bye-law 35 was made in 1860, and it cannot be that a bye-law made in 1860 containing the words "two able and skilful persons" can help us in the construction of bye-law 16, made in 1872, which contains no such words, but which uses instead the word "competent," that is authorised. Upon these grounds Newton was not an apprentice qualified according to the Act, and he ought therefore to have been convicted under sect. 54. The charge against Eagers involves the same point, and if Newton was not a competent person to assist as second hand, then Eagers is liable to conviction under bye-law 16.

*Finlay, Q.C. and Scrutton*, for the respondents, were not called upon.

WRIGHT, J.—In this case Aaron James Newton is summoned for acting as a lighterman without having a licence within the meaning of sect. 54 of the Watermen Act. It appears to me clear, on looking at the Act, that "qualified as herein provided" refers to the provisions in sects. 46, 47, and, I think, 48, under which in substance the enactment is that apprentices are to be persons apprenticed to freemen or to registered barge owners for a term of not less than five years, the term beginning at a not younger age than fourteen, or an older age than twenty, and there is a provision in a subsequent section—sect. 52—that for sole charge they must have had a further two years' working experience. It appears to me to be clear that that is the meaning of the words "apprentice qualified as herein provided" or "qualified according to this Act." No other form of qualification is suggested as being found in the Act, and those sections read in a reasonable sense do show the meaning of the words

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“qualified apprentice.” Then Edward Eagers was summoned for navigating a barge of above fifty tons without his second hand, the said Newton being licensed. To a great extent that depends upon the same question; but it is said that it is complicated by other considerations, and that under the Thames Conservancy Act, in addition to Eagers, who was a competent and licensed person, the 16th bye-law of the Thames Conservancy requires that there should be one man in addition on board, and it is said that that is not satisfied by there being an apprentice, at the very commencement, it may be, of his apprenticeship, and therefore inexperienced. But I think the cases cited on behalf of the appellant show that, in the opinion of the judges who decided those cases, an apprentice properly bound for the period and in the manner prescribed by the Watermen Act, may be a competent person. It is not necessary for the decision of this case to say that under all circumstances such apprentice must be a competent person. That point is not raised for us, nor has the magistrate decided it. We must take it here that no case was made that the particular apprentice was not competent. It seems to me clear, on the expression of opinion in those cases, and on the 35th bye-law, if the bye-law applies to the matter, as it seems to have been held that it does apply, that an apprentice qualified under the Watermen Act may be a competent person, and that is all we need decide.

CAVE, J.—I am of the same opinion. As soon as my brother pointed out sects. 46, 47, and 48 of the Act, it seemed to me that there was an end of the case, and no argument I have heard has induced me to think that the decision of the magistrate is at all wrong.

*Appeal dismissed.*

Solicitors for the appellant, *Safford and Kent.*

Solicitors for the respondents, *Wilson, Bristows, and Carpmael.*

## COURT OF APPEAL.

*Monday, March 25, 1895.*

(Before Lord ESHER, M.R., LOPES and RIGBY, L.JJ.)

REG. v. THE COUNTY COUNCIL OF THE WEST RIDING OF  
YORKSHIRE. (a)

APPEAL FROM THE QUEEN'S BENCH DIVISION.

*Police—Cost of pay and clothing—Borough maintaining separate police force—Constables added temporarily from another force—Contribution by county council—Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 24, sub-sect. 2 (j.)—Police Act, 1890 (53 & 54 Vict. c. 45), s. 25.*

*When a borough maintains a separate police force, and has temporarily added constables from another police force under an agreement made under sect. 25 of the Police Act, 1890, the county council is bound to pay to the council of the borough one half the cost of the pay and clothing of the constables so added, under sect. 24, sub-sect. 2 (j.), of the Local Government Act, 1888.*

THIS was an appeal by the County Council of the West Riding of Yorkshire from an order of the Divisional Court (Wills and Wright, JJ.) making absolute a rule *nisi* for a *mandamus*.

The borough of Rotherham maintained a separate police force. In 1893 strike riots occurred, and the watch committee of the town council of the borough procured additional police constables from the metropolitan police force, in order to strengthen their borough police force.

These additional police constables were obtained under an agreement, made with the Commissioner of the Metropolitan Police, under sect. 25 of the Police Act, 1890.

The Police Act, 1890 (53 & 54 Vict. c. 45), provides :

Sect. 25.—(1.) Where a police authority deem it expedient for any special emergency, or under any exceptional circumstances, to strengthen their police force (in this section referred to as the aided force) by constables belonging to another police force, such number of constables belonging to the latter force may be added to the aided force, and for such period as may be agreed on between the police authorities of the forces; and the constables so added, notwithstanding that they have not been sworn in or taken any declaration as constables of the aided force, shall, during that period, be deemed, save as otherwise provided by the agreement, to be for all purposes constables of the aided force, and shall have the like powers, duties, and privileges.

(2.) The agreement may be made for a particular occasion or as a standing agreement, and with reference either to recurring or to unforeseen events, or otherwise, as may be thought expedient.

(a) Reported by J. H. WILLIAMS and G. H. GRANT, Esqrs., Barristers-at-Law.

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(3.) Any powers conferred on a police authority by this section or by any agreement made thereunder may (subject to anything in the agreement to the contrary) be delegated by that authority to their chief officer of police by any general or special order, and with or without any exceptions, restrictions, or conditions.

(4.) An agreement under this section may contain such terms as to the command of the constables added to the aided force, and as to the expenses (including the pay and allowances of the constables so added and provision for pensions, gratuities, and allowances in the event of those constables being killed or injured) and otherwise, as may seem expedient.

(5.) An agreement may be made by a police authority with more police authorities than one.

By the agreement the town council agreed to pay to the receiver for the metropolitan police district "the pay and allowances of the constables thus added, and such further sums as the commissioner shall certify to have been expended in the travelling expenses of the added constables for conveyance of prisoners taken into custody by them, in making good damage done to their clothing, for the hire and keep of the horses and vans, and all other expenses (including a reasonable charge for administrative expenses and for the superannuation of the constables) which the commissioner shall certify to be incidental to the carrying out of this agreement."

Under the agreement, the town council paid to the receiver for the metropolitan district the sum of 640*l.* in respect of the cost of the added constables for a period ending on the 29th day of September, 1893.

The town council of the borough of Rotherham sent to the county council for the West Riding of Yorkshire an account of the cost of the pay and clothing of the police force of the borough, for the year ending on the 29th day of September, 1893, including in that account the said sum of 640*l.* paid in respect of the added constables, and claimed payment of one half of the total cost from the county council under sect. 24, sub-sect. 2 (j) of the Local Government Act, 1888.

The Local Government Act, 1888 (51 & 52 Vict. c. 41), provides:—

Sect. 24.—(1.) Whereas certain grants heretofore made out of the Exchequer in aid of local rates (in this Act referred to as local grants) will, by reason of the duties on the local taxation licences and the probate duty grant being by this Act made payable to local authorities, cease, it is therefore hereby enacted as follows:

(2.) In substitution for local grants the council of each county shall from time to time as from the said day pay out of the county fund, and charge to the Exchequer contribution account, the following sums, that is to say:

(j.) They shall, subject to the provisions of this Act, pay to the council of each borough maintaining a separate police force under the County and Borough Police Acts, one-half of the costs of the pay and clothing of the police of that borough during the preceding year.

The county council refused to pay any part of the sum of 640*l.* in respect of the added constables, whereupon the town council of Rotherham obtained a rule *nisi* for a *mandamus* to the county council to pay the sum of 320*l.*

During the argument in the Divisional Court, upon showing cause against the rule, it was agreed that no objection should be

taken to the form of the proceedings by *mandamus*, and that the county council should not be precluded from disputing the amount which had been paid in respect of "pay and clothing."

Sir *Richard Webster* (*Roskill* with him), for the county council, showed cause against the rule.—It is submitted that at any rate this is not a case in which a prerogative writ of *mandamus* ought to go. If there was any remedy against the county council it would be by an action at law, for their liability to contribute, if such liability existed, would constitute a debt. But there is no ground for any claim at law, because the extra police called in under an emergency cannot properly be described as being "for all purposes" police of the borough. [He referred to various statutes relating to the police force.] The Police Act of 1890 (53 & 54 Vict. c. 45), s. 25, provides for the assistance of one police force by another. This section shows that imported constables are dealt with, and is analogous to the sections in the earlier Acts, and enables the extra police to be treated as the original constables of the borough. The Act of 1890 is merely a consolidation Act, and the words "for all purposes" in sect. 25 mean that the imported constables, although not sworn, can act in all respects as the sworn constables of the aided force, and as if they were members of the latter force. The words "for all purposes" have nothing whatever to do with the question of the payment, or subsistence, or clothing of the imported constables. This is only a police Act, and has nothing whatever to do with county rates. By sect. 9 of the Local Government Act, 1888 (51 & 52 Vict. c. 41), the county police force is transferred to a joint committee of the quarter sessions and the county council; and by sect. 24 it is provided that the county council shall, in substitution for local grants, provide for one half of the costs of the pay and clothing of the police of the county and the borough police. But it is submitted that police called in under an emergency are not in any sense the borough or county police referred to here where provision is made for the pay and clothing of the police. The Police Act of 1890 has nothing to do with the Local Government Act.

*Roskill* followed.—Where a statute like the Local Government Act says that a certain sum is to be paid a statutory debt is created, and the proper remedy to enforce its payment is an action, and not a writ of *mandamus*: (*Shepherd v. Hills*, 11 Ex. Rep. 55; 25 L. J. 6, Ex.) The case of the *Mayor, &c., of Salford, v. The County Council of Lancashire* (63 L. T. Rep. 409; 25 Q. B. Div. 384) is distinguishable from the present case, and therefore the decision there will not apply here.

*Crump*, Q.C. (*Macmorran* and *F. Low* with him), in support of the rule, were not called upon.

*WILLS*, J.—The question we have to decide here is whether the Police Act of 1890, sect. 25 of which says that the constables, added in the way that they have been added in this case, shall, except as otherwise provided by agreement, be deemed to be

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“for all purposes” constables of the aided force, is to be read as if the words “for all purposes” do not mean for all purposes. It is a very common class of contention to say that, when the result of reading words in their natural sense is one that is disliked, they should not be so read. It seems to me that you ought always to read words in their natural sense unless by doing so you are led to some absurdity or injustice; but I cannot see that we are led to either by here giving to the words “for all purposes” their natural effect, namely, that the constables supplied to the aided force, that is to say, in this case the metropolitan constables, are constables of the aided force, namely, the Rotherham force, for the purpose of being paid by the Rotherham police authority. Now the Rotherham police authority has in effect paid their wages. Part of the wages has been paid to them, and part has been paid to the Commissioners of the Metropolitan Police in order that they may distribute it amongst them. That seems to me to be a mere piece of machinery, and it does not make it the less the pay of the men because the pay of the men is paid to them partly direct and partly through the channels of the people who employ them. Therefore the present case comes within the direct words of the statute, which gave the right to the Rotherham force to have half its expenditure paid by the county council. It is said that it may lead, and that it does lead, to a difficulty of this kind, or to an injustice of this kind, that the Commissioners of the Metropolitan Police have been getting from the London County Council half of an expenditure which they really have not paid; because it is idle to say that they have been really paying their men if their pay has been found by the Rotherham people during the time they were employed down there. I cannot tell how that is. I should be very slow to attribute to the Commissioners of the Metropolitan Police that they have done anything of the sort, but if they have, then it is a matter to which the London County Council’s attention may very properly be directed, and they may settle that matter between them. I do not know who pays it, but if the London County Council has to pay half the pay which is not really incurred by the metropolitan police, they will very soon put a stop to that. It is a result which shows, if it is correctly stated to us, that there is a hitch somewhere, and that something has been done which in some way or other ought not to be done, but it cannot in the least affect this question as to whether Rotherham, which has paid the wages of these men, who are for all purposes to be deemed part of this force, is entitled to recover half that sum under the name of the pay of their police force from the county council. I am of opinion that they are. It is conceded that, if the Rotherham police force, instead of getting trained men to come in from another police force who did not require to be taught their business, and who were efficient at once in respect of discipline and everything else, had enlisted for the same period persons directly employed by them, there could have been no

question about the liability on the part of the county council to pay. It shows therefore that the liability to pay does not depend on the character of the emergency which calls for additions, though they may be temporary to the police force, and I cannot think that the fact that the addition has been made by employing men who were fit for their business from another force can really affect any question of this kind. It has been agreed that no objection shall be taken merely as regards matters of form, and therefore, inasmuch as we should have no jurisdiction unless we treated this as an application for a *mandamus*, we shall grant a *mandamus*; but it is to be thoroughly understood that it is assented to by the other side that the granting of a *mandamus* shall be, not to pay 812*l.* or whatever is the sum named, but to pay the half of the pay of the imported force. The question of clothing may be dropped out, because it is agreed that there is no clothing in dispute.

WRIGHT, J.—I think the county council for the West Riding have acted with wisdom in assenting by their counsel to waive the question as to the technical form of this application. It is obviously a great saving to have the matter determined without a fresh application or a fresh action. I cannot help thinking that the matter is quite clear in principle. It does not seem to me to be arguable, but that some portion of this sum ought to be repaid to Rotherham by the county council, as being pay of what was in truth, for the time being, a Rotherham police force.

*Rule made absolute.*

The County Council appealed.

Lawson Walton, Q.C. and Roskill for the appellants.—The earlier statutes applied only to payment of part of the cost of the permanent police force, and the Local Government Act, 1888, only transferred to the county council the obligation to pay that which had been paid before, that is, the obligation as it then existed, and no greater obligation. The words in sect. 24, sub-sect. 2 (j.), “one-half of the cost of the pay and clothing of the police of that borough,” mean the regular permanent police force of the borough. When constables are added to the police of a borough, from another police force, under the provisions of sect. 25 of the Police Act, 1890, the enactment that they “are to be deemed to be for all purposes constables of the aided police force” applies only to the rights, duties, and protection of the added constables, which are to be the same as if they were constables of the aided police force. The words “for all purposes” cannot affect the rights, as between boroughs and counties, in respect of contribution. In respect of the permanent police force of a borough, the county council pays upon the certificate of the Home Secretary as to the numbers and efficiency of the force. The county council can have no such protection in respect of added constables, for they will not be reckoned in the numbers of the borough force. The “purposes” must be such as can be the subject of agreement

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under sect. 25, and an agreement under that section cannot vary the rights as between borough and county.

*Orump*, Q.C. and *A. Macmorran*, for the respondents, were not called upon to argue.

LORD ESHER, M.R.—The first thing which we have to do is to construe sect. 24, sub-sect. 2 (j.) of the Local Government Act, 1888, which provides that the county council of each county “shall, subject to the provisions of this Act, pay to the council of each borough maintaining a separate police force under the County and Borough Police Acts, one-half of the costs of the pay and clothing of the police of that borough during the preceding year.” Under that sect. 24 the county council has to pay many things which the Exchequer paid before, and, among them, to pay the above contribution to the cost of borough police. Those provisions, of course, refer only to the cost of the permanent police force, when that alone is in question. At that time there would be only the permanent police force, because there would be no other constables added except special constables, who would not be within sect. 24. The county council is to pay one-half of the costs of the “pay and clothing”; if there is no cost of “clothing,” then the provisions of the section are applicable only to the cost of “pay.” The county council, therefore, has to pay one-half of what it has cost for the “pay and clothing” of the police force of the borough. At the time when the Local Government Act, 1888, was passed this kind of addition to a police force was not within the provisions of sect. 24. But now the Police Act of 1890 settles what the police force of a borough during the year will be. Sect. 25 of that Act provides that, “where a police authority deem it expedient for any special emergency, or under exceptional circumstances, to strengthen their police force (in this section referred to as the aided force) by constables belonging to another police force, such number of constables belonging to the latter force may be added to the aided force, and for such period, as may be agreed on between the police authorities of the forces, and the constables so added . . . shall, during that period, be deemed . . . to be for all purposes constables of the aided force, and shall have the like powers, duties, and privileges.” Now, if you added twenty constables to fifty constables, are not all the seventy the same police force? But this is made perfectly clear by the words “shall be deemed to be, for all purposes, constables of the aided force.” We have, therefore, these constables added to the police force of another place which asks for them, and they are to be deemed to be, for all purposes, constables of the police force to which they are added. How can there be any plainer language than that? Then those provisions are to be read into sect. 24, sub-sect. 2 (j.) of the Local Government Act, 1888, and these added constables become part of the police force of the borough, to the cost of the pay and clothing of which the county council must contribute. Now,

the circumstances are to be determined by the agreement between the police authorities of the forces. The agreement is before us, and provides that the constables of the metropolitan police force are to be added to the police force of the borough. The council of the borough has paid so much for these added constables, under the agreement, and that amount is part of that which the council has paid for the police force of their borough, and they are entitled to receive one-half of that, so far as it relates to "pay and clothing," from the county council. In my opinion the effect of the two statutes is as clear as it can be. The appeal therefore fails, and must be dismissed.

LOPES, L.J.—I cannot help thinking that this case is a very clear one. The question entirely depends upon the construction of sections in two Acts. Sect. 24, sub-sect. 2 (j.) of the Local Government Act, 1888, says that the council of each county "shall pay to the council of each borough maintaining a separate police force under the County and Borough Police Acts, one-half of the costs of the pay and clothing of the police of that borough during the preceding year." The important words there are "costs of the pay and clothing of the police force." That Act did not contemplate the case of emergency or of borrowed police constables. But then followed the Police Act of 1890, which did deal with such police. Sect. 25 provides for adding constables temporarily from another police force, and provides that the borrowed constables are "to be deemed to be for all purposes constables of the aided force." In my opinion such a case is brought within sect. 24, sub-sect. 2 (j.) of the Local Government Act, 1888, and the words "for all purposes" include the payment by the county council of one-half of the costs of their pay and clothing. I think that the judgment of the Court below was quite right, and that the appeal fails.

RIGBY, L.J.—I am of the same opinion. I also think that the only question is as to the construction of two Acts of Parliament. By the Local Government Act, 1888, s. 24, sub-sect. 2 (j.) the county council is to pay any borough which maintains its own police force one-half of the costs of the pay and clothing of the police of that borough. It has been suggested that the use of the word "clothing" shows that the section deals only with police which must be clothed by the borough. I cannot accept that suggestion. It may be that, in any one year, no new clothing would be required for the permanent police force, and that nothing would be spent on clothing. In that case there would be no payment for clothing; but the argument is that, unless there is to be a contribution for "clothing," there cannot be a contribution for "pay"; if that were correct, the borough could get nothing for that year from the county council. It is said that, in the earlier Police Acts, there is no provision for borrowing constables from another police authority, and that, therefore, the Act of 1888 could not apply to borrowed constables. That arrangement, however, was made in 1890 in order

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to prevent the necessity for increasing the police force of a district because of emergencies, by enabling one police force to borrow from another. The Police Act of 1890 provides that the borrowed police are to be deemed to be part of the aided force for all purposes. That being so, why is not the cost of the borrowed police to be part of the cost, for the year in which it is incurred, of the police which is so aided? If by the agreement between the two forces the aided force would have to pay for the wear and tear of the clothing of the added police, that would be within the Act of 1888. I cannot see why the words of sect. 25 of the Police Act, 1890, are not to have their ordinary meaning. They do not interfere with the provisions of the Act of 1888; they only give further powers to those boroughs which are entitled to contribution from the county councils. The earlier Police Acts are not applicable to this case. It has been argued that some effect must be given to the annual inspection which is required. But the inspection and the certificate are only in respect of the efficiency of the police force; and the inspection is not in respect of the numbers and cost of the force. It has been suggested that in this way an allowance can be got in two districts in respect of the same police. I think that cannot be so. One-half of the cost of the pay and clothing of the police force is to be paid by the county council; and in ascertaining that cost any borough must take into account any sum which it has received from any other police force. I think that, upon the principle of reading an Act of Parliament so as to mean what it says, and reading these two Acts together, they mean that a borough is to receive from the county council one-half of whatever they pay for the pay and clothing of the police. I agree that the appeal must be dismissed.

*Appeal dismissed.*

Solicitors for the appellants, *Badham and Edwards*, for *Trevor Edwards*, Wakefield.

Solicitors for the respondents, *Stevens, Bawtree, and Co.*, for *Hickmott*, Rotherham.

## QUEEN'S BENCH DIVISION.

*Monday, April 1, 1895.*

(Before CAVE and WRIGHT, JJ.)

REDGRAVE v. LLOYD AND SON. (a)

*Factories and workshops—Machinery—Fencing—“All dangerous parts of machinery”—Power of magistrate to determine what constitutes dangerous machinery—Factory and Workshop Act, 1878 (41 & 42 Vict. c. 16), s. 5—Factory and Workshop Act, 1891 (54 & 55 Vict. c. 75), s. 6.*

*By the Factory and Workshop Act of 1891 it is provided that “all dangerous parts of machinery” are to be securely fenced. The power of determining what constitutes “dangerous machinery,” which formerly might be settled by arbitration, is now transferred to the magistrate.*

*Upon an information, under sect. 6, sub-sect. 2 of the Factory and Workshop Act, 1891, laid by a factory inspector, it appeared that a boy employed by a tin manufacturer had suffered bodily injury whilst working a steam power press for shaping tin plates for boxes and cans. The machine, which was worked by steam power, was put in motion by a treadle whereby an upper die descended upon a lower die in order to stamp the tin plates. The boy's fingers were caught between the two dies and injured. The magistrate dismissed the information on the ground that the part of the machine where the accident occurred was not part of dangerous machinery which required to be fenced under the Act.*

*Held, that the effect of sect. 6, sub-sect. 3, of the Act of 1878, as amended by sect. 6, sub-sect. 2, of the Act of 1891, is general and is not confined to the particular class of machinery mentioned in the previous part of the section.*

CASE stated by one of the metropolitan police magistrates.

An information and complaint preferred by Jasper Redgrave, an inspector under the Factory and Workshop Act (the appellant in this case), against A. Lloyd and Sons Limited (the respondents), was heard and determined on the 1st day of November, 1894, at the Southwark Police-court.

The information and complaint stated that, on the 11th day of September, 1894, at Mill-street, Dockhead, within the Metropolitan Police District, the respondents were then and there the occupiers of a certain factory within the meaning of the Factory

(a) Reported by G. H. GRANT, Esq., Barrister-at-Law.

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 c. 16, s. 5 ;  
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and Workshop Acts, 1878-1891, wherein on the 11th day of September, 1894, a person named Frank Robson suffered bodily injury in consequence of the respondents having neglected to fence securely certain dangerous machinery, required in pursuance of the said Acts to be securely fenced, to wit, a power press.

From the facts set out in the stated case it appeared that the respondents were tin-box manufacturers, and that the said Frank Robson was employed by them in their factory to work a power press used for the purpose of shaping tin plates for the manufacture of tin boxes, cans, and such like things, and whilst the said Robson was so employed in working the power press he suffered bodily injury by having one of his fingers taken off by the machine.

The press was worked by steam power, and the operator threw the machine into gear by placing his foot upon a treadle, which caused the upper die to descend upon the lower die. The motion was communicated to the upper die, which worked up and down inside the fixed part of the machinery. The lower part of the machine was a sort of table in which the lower die was fixed, the piece of tin was placed on the lower die, and the upper die then came down with great force and stamped the tin as required.

In the event of a piece of tin adhering to the die, the operator removed it by pushing it off with a piece of stick provided for the purpose.

It was the duty of Robson when working the machine to place a piece of tin upon the lower die, and by means of the treadle to cause the upper die to descend upon it, and to remove any piece of tin that might adhere to the die.

While he was endeavouring to remove a piece of tin which adhered to the upper die by pushing it off at the side with the stick, his hand slipped under the die and was injured.

The machine was not constructed or fenced or protected in such a way as to prevent the hand of a person attempting to remove a piece of tin from the sides of the die from slipping under the upper die.

It was contended on behalf of the appellant that the part of the machine where the upper die came into contact with the lower die, and where the accident happened, was a part of dangerous machinery within the meaning of sect. 5 of the Factory and Workshop Act, 1878 (41 Vict. c. 16), as amended by sect. 6 of the Factory and Workshop Act, 1891 (54 & 55 Vict. c. 75), and required by or in pursuance of the first-mentioned Act to be securely fenced, and also that the machinery was not securely fenced or so constructed as to be equally safe as it would be if it were securely fenced.

It was contended on behalf of the respondents that the part of the power press was not any part of dangerous machinery within the meaning of the aforesaid statutes, nor machinery which was

required by or in pursuance of the statutes to be securely fenced.

Without determining whether or not in point of fact the press was dangerous, the magistrate held that the words "dangerous parts of the machinery" in sect. 5 of the Factory and Workshop Act, 1878, as amended by sect. 6 of the Factory and Workshop Act, 1891, refer to machinery *ejusdem generis* as that mentioned in the previous part of the section, and in the definition of "mill gearing" in sect. 96 of the Factory and Workshop Act, 1878, and of "machinery" in sect. 37 of the Factory and Workshop Act, 1891, and he therefore held that the part of the press where the upper die came in contact with the lower die, and where the accident happened, was not a part of dangerous machinery or any machinery which was required by or in pursuance of the aforesaid statutes to be securely fenced, and upon this ground he dismissed the summons.

Sect. 5, sub-sect. 3, of the Factory and Workshop Act, 1878 (41 & 42 Vict. c. 16), provides that

Every part of the mill gearing shall either be securely fenced or be in such position or of such construction as to be equally safe to every person employed in the factory as it would be if it were securely fenced.

Sect. 6, sub-sect. 2, of the Factory and Workshop Act, 1891 (54 & 55 Vict. c. 75), provides that in sub-sect. 3 of sect. 5 of the principal Act, 1878, there shall be inserted before the words "every part" the words "all dangerous parts of the machinery and."

*Sutton* for the appellant.—The machine where the upper die came in contact with the lower die, and where the accident happened, was a part of dangerous machinery within the meaning of sect. 5 of the Act of 1878, as amended by sect. 6 of the Act of 1891, and required to be securely fenced or to be of such a construction or in such a position as to be as safe as if it were securely fenced.

*A. J. Walter* for the respondents.—The magistrate's decision was right. Sect. 6 of the Act of 1891 must apply to the same class of machinery as that mentioned in sect. 5 of the Act of 1878. There is a distinction to be drawn between the motive parts of machinery and those parts which actually perform the industrial operation. Sect. 5 of the Act of 1878 does not apply to the industrial parts, but solely to the motor parts, and the former class should not be taken to be included in that section as amended by sect. 6 of the Act of 1891. Sub-sect. 3 of sect. 5 is not repealed, but sect. 6 is substituted for it. If the appellant's contention is right circular saws and the industrial parts of many other machines would have to be fenced, and this was never intended; it would moreover entail upon the magistrate the duty of determining what constitutes "dangerous machinery," and thus deprive the manufacturer or occupier of the factory or workshop of the right of going to arbitration: (see sect. 8, sub-sect. 4, of the Act of 1891.)

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CAVE, J.—I am of opinion in this case that the magistrate was mistaken. The view which he took was that sect. 6, sub-sect. 2, of the Act of 1891 would not include such machinery as this. In that opinion I think he was wrong, and that he ought to have inquired whether this was machinery which was dangerous. The course of the Legislature is this. In 1878 the general Act was passed, which by sect. 5, sub-sect. 3, enacted that every part of the mill gearing shall either be securely fenced or be in such position or of such construction as to be equally safe to every person employed in the factory as it would be if it were securely fenced. It is admitted that that section, as it originally stood, did not apply to such machinery as this is. Then there followed sect. 6, which gave power to obtain the fencing of other dangerous machinery of which notice was given by the inspector, and provided for an arbitration between the inspector and the occupier of the factory in case of dispute. In 1891 a further Act was passed, which by sect. 6 amends sect. 5 of the previous Act, and provides that in sub-sect. 3 before the words “every part” there shall be inserted the words “all dangerous parts of the machinery.” Now, sect. 6 of the former Act was at the same time wholly repealed. It is perfectly obvious that the power of determining what is dangerous machinery by arbitration was intended to be taken away, and that the power to say whether the machinery was dangerous or not was intended to be given to the magistrates, subject, of course, to appeal to the quarter sessions under sect. 90 of the Act of 1878, if the occupier were dissatisfied with the magistrate’s finding in point of fact, or subject to appeal to this Court if the occupier were dissatisfied with the magistrate’s finding in point of law. Those provisions seem to me to be amply sufficient to secure a proper working of the Act. The Act of 1891 contains sect. 8, which enacts that “Where the Secretary of State certifies that in his opinion any machinery or process or particular description of manual labour used in a factory or workshop (other than a domestic workshop) is dangerous or injurious to health, or dangerous or injurious to life or limb,” there shall be notice served on the occupier of the factory, and if he objects to the fencing, the question of the possibility of fencing the machine shall be submitted to arbitration. It is said that this section was substituted for sect. 6 of the Act of 1878. I am of opinion, however, that that is not so; I should rather say that sect. 8 of the Act of 1891 repealed sect. 6 of the Act of 1878, and if one looks to see the course of proceedings under the section one is the more confirmed in that view, because by sects. 8 to 12 special rules may be made as to the manufacturing of white lead, paints, the extraction of arsenic, the enamelling of iron plate, and the manufacture of phosphorus, and so on. It is in point of fact rather to a particular process that those sections have relation, although I do not for one moment say that they may not have relation to such a case as this if the Secretary of State thought fit to certify. That, how-

ever, is a matter which one need not decide at present. What seems to me to be the effect is, that under sect. 6 of the Act of 1891 the question would go before a magistrate, subject, as I have said, to an appeal upon a point of law to this Court, and to an appeal upon matters of fact to quarter sessions. That appears to me more in accordance with the presumable intention of the Legislature than the course which has been suggested by the learned counsel for the respondents. I am of opinion that this case should go back to the magistrate with the expression of our opinion that he must proceed to hear it, and decide whether or not the machine is really dangerous.

WRIGHT, J.—I entirely agree. Mr. Walter really asks us to disregard the enactment of 1891. The effect of sect. 6, subsect. 2, is perfectly clear and the language general. “All dangerous parts of the machinery” are the words used. The manufacturer or occupier has still the option of three things: he may either fence the dangerous part, or he may place it in such a position that it will be safe, or he may alter the construction of it so as to make it as safe as if it were fenced. One or other of those things the Legislature has said he must do.

*Appeal allowed. Leave to appeal refused on the ground that the Court thought this was a criminal cause or matter.*

Solicitors: for the appellant, *The Solicitor to the Treasury*; for the respondent, *William Hurd and Son*.

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## QUEEN'S BENCH DIVISION.

*Tuesday, April 2, 1895.*

(Before CAVE and LAWRENCE, JJ.)

REG. v. SLADE AND OTHERS; *Ex parte* SAUNDERS.

REG. v. JUSTICES OF LONDON AND OTHERS; *Ex parte*  
SAUNDERS. (a)

*Certiorari—Quarter sessions—Amendment of conviction—Imprisonment with hard labour in default of distress—Striking out of words “hard labour”—Baines’s Act (Quarter Sessions Act, 1849, 12 & 13 Vict. c. 45), s. 7.*

*S. was convicted in a court of summary jurisdiction on an*

(a) Reported by G. H. GRANT, Esq., Barrister-at-Law.

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information under the *Public Health (London) Act, 1891*, for not abating a nuisance, and was fined 10*l.* and costs, or in default of sufficient distress was ordered to be imprisoned with hard labour. S. paid the fine without appealing.

*Held*, upon a rule for a certiorari, that the conviction must be quashed, as the Act does not authorise hard labour for such an offence.

S. was also convicted on another information under the same Act for disobeying a closing order, and the conviction in this case was drawn up in the same form as in the last case. S. did not pay the fine, but appealed to the quarter sessions, when the justices on evidence that it was owing to an oversight on the part of the clerk when drawing up the conviction that the words "hard labour" were mentioned, amended the conviction under sect. 7 of *Baines's Act*, affirmed the conviction as amended, and dismissed the appeal.

*Held*, upon a rule for a certiorari, that the decision of the quarter sessions was right.

IN these two cases, which were taken together, rules *nisi* for a certiorari had been obtained by Francis Saunders.

In the case of *Reg. v. Slade* the rule *nisi* had been obtained ordering one of the magistrates of the police-courts of the metropolis, and the Board of Works for the Saint Saviour's district to show cause why a writ of *certiorari* should not issue to remove a conviction of Saunders under the *Public Health (London) Act 1891* (54 & 55 Vict. c. 76) s. 4, for that he, being the owner of a dwelling-house, No. 75, Blackfriars-road, had failed to comply with a notice to abate a nuisance on the premises in respect of which charge the magistrate, having made a closing order, fined Saunders 10*l.* and 2*l.* 2*s.* for costs, and why the conviction, when returned, should not be quashed on the ground that it adjudged that Saunders, in default of sufficient distress, be imprisoned and kept to hard labour for the space of one calendar month, whereas the Act under which the conviction took place did not authorise hard labour for such an offence.

Saunders duly paid the fine.

In the case of *Reg. v. Justices of London and others* a rule was obtained ordering justices and the Board of Works for the Saint Saviour's district to show cause why a writ of *certiorari* should not issue for the removal of an order of the Court of Quarter Sessions for the county, amending and affirming a conviction of the said Saunders before one of the magistrates of the police-courts of the metropolis, for that he had, for twenty-seven days, unlawfully acted contrary to a closing order under the *Public Health (London) Act 1891*, and also the conviction, and why the said order and conviction should not be quashed on the grounds (1) that the conviction was bad on the face of it, because, in default of sufficient distress it adjudged the relator to be imprisoned with hard labour; and (2) that the sessions could

not strike out "hard labour" from the conviction, having no power under 12 & 13 Vict. c. 45, s. 7 to amend a matter of substance.

In this case Saunders neither paid the fine of 27*l.* nor the costs, but appealed to the Quarter Sessions for the county of London. On the hearing of the appeal the justices of the quarter sessions dismissed the appeal with costs, but under sect. 7 of the Quarter Sessions Act 1849, known as Baines's Act (12 & 13 Vict. c. 45), amended the conviction by striking out the words "there to be kept to hard labour" from the clause which imposed imprisonment in default of distress, and they confirmed the conviction as amended. From the affidavits in the two cases it appeared that at the hearing in the police-court the magistrate said nothing at all in either case about the imposition of hard labour in the event of there not being sufficient distress.

The error arose owing to a mistake of the magistrates' clerk who, when drawing up the convictions, made use of certain printed forms which contained the following clause imposing imprisonment with hard labour in default of distress :

And in default of sufficient distress it is adjudged that the defendant be imprisoned in Her Majesty's prison at \_\_\_\_\_, there to be kept to hard labour for the space of \_\_\_\_\_, unless the said sums and all costs and charges of the said distress be sooner paid.

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*F. Dodd* showed cause against the rules in both cases.—There was sufficient evidence before the magistrate to enable him to convict. The mistake in the form of the conviction only arose through an oversight of the magistrates' clerk. [CAVE, J.—*Reg. v. Kerswill* (1895) 1 Q. B. 1) seems to bear on this case. In respect of the first conviction the relator has paid the fine.] Baines's Act was not cited in that case. The mistake made by the clerk in this case is such a mistake as is met by Baines's Act. [CAVE, J.—Baines's Act applies where the order has been drawn up not in accordance with the evidence given; it does not apply where the order has been drawn up not in accordance with the law.] He cited *Reg. v. Justices of Middlesex* (2 Q. B. Div. 516).

Saunders appeared in person in support of the rules.—The order made is erroneous in substance, and cannot be amended under Baines's Act: (*Re Clew*, 8 Q. B. Div. 511; *Reg. v. Tomlinson*, L. Rep. 8 Q. B. 12; *Reg. v. Padbury*, 5 Q. B. Div. 126; *Reg. v. Kay*, L. Rep. 8 Q. B. 324.)

CAVE, J.—In the case of *Reg. v. Slade*, it is admitted that the conviction is drawn up in a wrong form. It is said that we have power to amend it under sect. 7 of Baines's Act. It is not necessary, however, to decide that point, although I rather doubt whether we have such power, but I am clearly of opinion that we ought not to amend it in this case, even if we had the power. The order of conviction here imposes a term of imprisonment with hard labour in default of distress on nonpayment of the fine. It is suggested to us that this was only a mistake in the drawing up of the conviction by the clerk, but the result of

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an order in such form might have been that of the defendant being sent to prison and being kept to hard labour had he not paid the fine. I am therefore clearly of opinion that the rule in this case ought to be made absolute, and that the conviction must be quashed. With regard to the second case, that of *Reg. v. The Justices of London*, the circumstances are rather different, though in this case too the conviction was, owing to the same oversight as in the last case, drawn up in a similar manner. Here the defendant went on to appeal to the quarter sessions against the conviction, and did not come here to this court to have it quashed, which he might have done. The justices at quarter sessions thereupon amended the conviction, acting upon the evidence before them. The defendant now says that they had no jurisdiction to do so. If there is such a power it is conferred by sect. 7 of Baines's Act. But it does not seem to have been exercised in any reported case. (a) I doubt whether that section applies to a conviction at all. However, in the case of *Reg. v. The Justices of Middlesex (ubi sup.)* the Court expressed an opinion that the magistrates had the power to amend if they were so inclined. In that case objection was made that the conviction was bad because it omitted certain words, and did not, therefore, disclose any offence within the statute. The offence charged there was one under the Vagrant Act (3 Geo. 4, c. 83), s. 4. That is not a very strong case, still I do not feel sufficiently sure that the power of amending the conviction was out of the power of the justices in the present case to enable me to overrule the quarter sessions and make the rule absolute. The rule must therefore be discharged.

LAWRANCE. J.—I agree.

*Reg. v. Slade, rule made absolute. Reg. v. Justices of London, rule discharged.*

Solicitor against the rule, *R. J. Tickell*.

(a) See, however, the following cases, which were not cited: *Reg. v. Walker* (45 J. P. 682); *Reg. v. Biggins* (5 L. T. Rep. 605).—REP.

## QUEEN'S BENCH DIVISION.

*Thursday, April 25, 1895.*

(Before DAY and WRIGHT, JJ.)

SHERRAS (app.) v. DE RUTZEN (resp.). (a)

*Licensing Acts—Intoxicating liquor—Sale of same to police sergeant—Mens rea—On or off duty—Knowledge of same—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 16, sub-sect. 2.*

*Appellant was convicted under sect. 16, sub-sect. 2, of the Licensing Act, 1872, which prohibits any licensed person from supplying "any liquor or refreshment whether by way of gift or sale to any constable on duty unless by authority of some superior officer of such constable." The police constable was in fact on duty. Held, that, the appellant having bonâ fide believed the police constable to be off duty, the conviction must be quashed.*

CASE stated by Sir Peter Edlin, Q.C., chairman of Quarter Sessions for the County of London.

The appellant was licensee of a public-house, and was convicted before a metropolitan police magistrate under sect. 16, sub-sect. 2, of the Licensing Act, 1872 (35 & 36 Vict. c. 94), for having unlawfully supplied liquor to a police constable on duty without having the authority of a superior officer of such constable for so doing.

The facts showed that the appellant's public-house was situated nearly opposite a police-station, and was much frequented by the police when off duty. On the 16th day of July, 1894, at about 4.40, the police constable in question, being then on duty, entered the appellant's house, and was served with liquor by the appellant's daughter in his presence. Prior to entering the house the police constable had removed his armlet, and it was admitted that if a police constable is not wearing his armlet that is an indication that he is off duty. The armlet is removed at the police-station when a constable is dismissed, and a publican seeing the armlet off would naturally think the police constable to be off duty.

The police constable was in the habit of using the appellant's house, and was well known to the appellant and his daughter. Neither the appellant nor his daughter made any inquiry of the police constable as to whether he was or was not on duty; but they took it for granted that he was off duty in consequence of his armlet being off, and served him with liquor being under that belief. The appellant and his daughter were in the habit of

(a) Reported by T. R. BRIDGWATER, Esq., Barrister-at-Law.



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serving a number of police constables in uniform with their armlets off each day, and the question whether they were or were not off duty was never asked when the armlet was seen to be off, and he was served with liquor under that belief by the appellant's daughter.

The appellant appealed to quarter sessions against the conviction of the magistrate, contending that, in order to constitute an offence under sect. 16, sub-sect. 2, of the Licensing Act, 1872, there must be shown to be either knowledge that the police constable was on duty or an intentional abstention from ascertaining whether he was on duty or not.

The Court of Quarter Sessions upheld the conviction, considering that knowledge that the police constable, when served with liquor, was on duty, was not an essential ingredient of the offence; but stated this case for the opinion of the Court.

Sect. 16 of the Licensing Act, 1872 (35 & 36 Vict. c. 94), provides that,

If any licensed person (1) knowingly harbours or knowingly suffers to remain on his premises any constable during any part of the time appointed for such constable being on duty . . . or (2) supplies any liquor or refreshment whether by way of gift or sale to any constable on duty unless by authority of some superior officer of such constable; or (3) bribes or attempts to bribe any constable . . . he shall be liable to a penalty . . .

*Poland*, Q.C., and *P. Taylor* for the appellant.—This conviction by the magistrate was wrong; a reasonable and honest belief in the existence of circumstances which, if true, would make the act an innocent act, has been held a good defence. It could not have been intended that a publican serving a police constable with liquor should be liable to a penalty if the constable was in fact on duty, when every means of concealing this fact from the publican had been taken. Knowledge that the person served was drunk is not necessary to constitute an offence under sect. 13; but the publican must be taken to know whether a person is drunk or not. This was so decided in the case of *Cundy v. Le Cocq* (51 L. T. Rep. 265; 53 L. J. 125, M. C.; 13 Q. B. Div. 207). Another case (*Mullins v. Collins*, 29 L. T. Rep. 838; L. Rep. 9 Q. B. 292) is a decision in the appellant's favour, because there it was pointed out that the decision would have been different had the servant not known that the constable was on duty.

*Macmorran* in support of the conviction.—The word "knowingly," which is inserted in sect. 16, sub-sect. 1, is omitted in sub-sect. 2 of sect. 16. It was intended by the Legislature that a publican serving a police constable, whether on duty or not, should do so at his own risk. Sect. 16, sub-sect. 2, contains an absolute prohibition against serving a police constable while on duty, in the same way as *Cundy v. Le Cocq* (*ubi sup.*) held sect. 13 to contain an absolute prohibition against serving a person already drunk; knowledge of the condition of the person served in either case is not an element in the offence. The absence of the armlet ought not to have satisfied the appellant.

DAY, J.—I am clearly of opinion that this conviction ought to be quashed. A police constable comes into the house of the appellant without an armlet on, and therefore with the appearance of being off duty. The appellant's house was in the immediate neighbourhood of the police-station, and the appellant believed, and he had very natural ground for believing, that the constable was off duty. Acting on that belief he accordingly served him with liquor. As a matter of fact the constable was on duty, and the question is, does that fact make the innocent act of the appellant an offence? I do not think it does. The appellant had no intention to do a wrongful act; he acted in the *bonâ fide* belief that the constable was off duty. It seems to me, therefore, that the contention that the appellant committed an offence is entirely an erroneous one. An argument in support of the conviction has been based upon the appearance of the word "knowingly" in sect. 16, sub-sect. 1, and the omission of that word in sub-sect. 2 of that section. In my opinion the only effect of this is to shift the burden of proof. In cases under sub-sect. 1 of sect. 16, it is for the prosecution to prove knowledge, while in cases under sub-sect. 2 it is for the defendant to prove that he did not know. That is the only inference that I draw from the insertion of the word "knowingly" in sub-sect. 1 of sect. 16, and its omission in sub-sect. 2 of that section. It appears to me that it would be straining the law to say that this publican, acting as he did in the *bonâ fide* belief that the constable was off duty, and having very reasonable grounds for that belief, was nevertheless guilty of an offence against sect. 16, for which he was liable to have his licence indorsed.

WRIGHT, J.—I am entirely of the same opinion. It is not very easy to reconcile the cases on the subject, but there are many of them. The presumption is, that *mens rea*, an evil intention or a knowledge of the wrongfulness of the act, is an essential ingredient in every offence; but that presumption is liable to be displaced either by the words of the statute creating the offence, or by the subject-matter with which it deals, and both must be considered: (*Nichols v. Hall*, 28 L. T. Rep. 473; L. Rep. 8 C. P. 322; 42 L. J. 157, C. P., and 105, M. C.) One of the most remarkable exceptions was in the case of bigamy, where all the judges held, on the statute 1 Jac. 1, c. 11, that a man was rightly convicted of bigamy who had married after an invalid Scotch divorce, which had been obtained in good faith, and the validity of which he had reason to doubt; this was *Lolley's case* (R. & R. 237). Another exception, apparently grounded upon the language of a statute, is *Prince's case* (32 L. T. Rep. 700; L. Rep. 2 C. C. Res. 154), where it was held by fifteen judges against one that a man was guilty of abduction of a girl under sixteen, although he believed, in good faith and on reasonable grounds, that she was over that age. Apart from isolated and extreme cases of this kind, the principal classes of

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exceptions may be reduced to three. One is a class of acts which, in the language of Lush, J., in *Davies v. Harvey* (30 L. T. Rep. 629; L. Rep. 9 Q. B. 433; 43 L. J. 121, M.C., and 184 Q. B.), are not criminal in any real sense, but are acts which in the public interest are prohibited under a penalty. Several such instances are to be found in the decisions on the Revenue Statutes; e.g., *Attorney-General v. Lockwood* (9 M. & W. 378), where the innocent possession of liquorice by a beer retailer was held to be an offence. So, under the Adulteration Acts, *Reg. v. Woodrow* (15 M. & W. 404), as to innocent possession of adulterated tobacco; *Fitzpatrick* (app.) v. *Kelly* (resp.) (28 L. T. Rep. 558; L. Rep. 8 Q. B. 337), and *Roberts* (app.) v. *Egerton* (resp.) (30 L. T. Rep. 633; L. Rep. 9 Q. B. 494), as to the sale of adulterated food. So under the Game Act, as to the innocent possession of game by a carrier, *Rex v. Marsh* (2 B. & C. 717). So as to the liability of a guardian of the poor, *Davies v. Harvey* (*ubi sup.*). To the same head may be referred *Reg. v. Bishop* (42 L. T. Rep. 240; 5 Q. B. Div. 259), where a person was held rightly convicted of receiving lunatics in an unlicensed house, although the jury found that he honestly and on reasonable grounds believed that they were not lunatics. Another class comprehends some, and perhaps all, public nuisances. In the case of *Reg. v. Stephens* (14 L. T. Rep. 593; L. Rep. 1 Q. B. 702) the employer was held liable on an indictment for a nuisance caused by workmen without his knowledge and contrary to his orders; and it was so in the cases of *Rex v. Medley* (6 C. & P. 292) and *Barnes* (app.) v. *Ackroyd* (resp.) (26 L. T. Rep. 692; L. Rep. 7 Q. B. 474; 41 L. J. 110, M. C., and 241, Q. B.). There may be cases where, although the proceedings may be criminal in form, they are really only a summary mode of enforcing a civil right: see the judgments of Williams and Willes, JJ., in the case of *Marden v. Porter* (7 C. B. N. S. 641; 29 L. J. 213, M. C.) as to an unintentional trespass in pursuit of game; *Lee v. Simpson* (3 C. B. 871) as to unconscious dramatic piracy; and *Hargreaves* (app.) v. *Diddams* (resp.) (32 L. T. Rep. 600; L. Rep. 10 Q. B. 582) as to a *bonâ fide* belief in a legally impossible right to fish. Except in such cases as these, there must in general be guilty knowledge on the part of the defendant, or of someone whom he has put in his place to act for him generally or in the particular matter, in order to constitute an offence. It is plain that, if the guilty knowledge is not necessary, no care on the part of the publican could save him from a conviction under sect. 16, sub-sect. 2, since it would be as easy for the constable to deny that he was on duty when asked, or to produce a forged permission from his superior officer, as to remove his armlet before entering the public-house. I am therefore of the opinion that this conviction must be quashed.

*Conviction quashed.*

Solicitors for the appellant, *Maitlands, Peckham, and Co.*  
Solicitor for the respondent, *The Solicitor to the Treasury.*

## QUEEN'S BENCH DIVISION.

*Wednesday, April 3, 1895.*

(Before CAVE and LAWRENCE, JJ.)

*Ex parte WILKINS AND ANOTHER. (a)*

*Intimidation—Following person to compel abstention from legal acts—Form of commitment—Sufficiency of description of offence—Habeas corpus—Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), s. 7.*

*By sect. 7 of the Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), it is provided that every person who, with a view to compel any other person to abstain from doing any act which such other person has a legal right to do, wrongfully and without legal authority follows such other person with two or more other persons in a disorderly manner in or through any street, shall, on conviction, be liable to pay a fine or to imprisonment.*

*G. W. and another were summarily convicted under the above section, and sentenced to a term of imprisonment. Each of the commitments stated that they had been charged for that they "with a view to compel one T. to abstain from working as a shoe finisher . . ." did unlawfully, &c., follow him about, &c.*

*On a motion for a writ of habeas corpus on the ground that the form of the commitments did not sufficiently specify the act from doing which it was sought to compel T. to abstain :*

*Held, that the form of the commitments sufficiently expressed the offence charged, and that they were accordingly good commitments.*

**T**HIS was an *ex parte* motion for rules *nisi* for writs of *habeas corpus* to issue directed to the governor of the gaol at Northampton, to bring up the bodies of George Wilkins and John Johnson, who were imprisoned in the gaol there, having been sentenced to a month's imprisonment under the Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), s. 7, on the ground that the commitments were not sufficiently specified. The charge arose in connection with disturbances that took place at Northampton, during the course of a strike in the boot trade there.

(a) Reported by G. H. GRANT, Esq., Barrister-at-Law.

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*Intimidation*  
—*Following*  
*to compel*  
*abstention*  
*from legal*  
*act—Commit-*  
*ment—Form*  
—*Description*  
*of offence—*  
*Conspiracy*  
*and Protec-*  
*tion of Pro-*  
*perty Act,*  
1875—38 & 39  
Vict. c. 86,  
s. 7.

Sect. 7 of the Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), provides as follows :

Every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority . . . persistently follows such other person about from place to place . . . or follows such other person with two or more other persons in a disorderly manner in or through any street or road, shall, on conviction . . . be liable to a penalty . . . or imprisonment.

The commitments were in each case in the following form :

The defendant has been this day before the Court of Summary Jurisdiction sitting at the County Hall, Northampton, charged for that he on the 14th day of March, 1895, . . . did, with a view to compel one Frederick Timms to abstain from working as a shoe finisher in the employment of one Simon Collier, a shoe manufacturer, carrying on business in the parish of Dallington, in the county aforesaid, which the said Frederick Timms then had a legal right to do, unlawfully, wrongfully, and without legal authority, follow the said Frederick Timms with more than two persons in a disorderly manner in a certain street—to wit, in a main road or street in the parish of Dallington.

*W. A. Metcalfe.*—The commitments did not sufficiently specify that which the man Timms had been compelled to abstain from doing. The expression made use of, namely, “working as a shoe-finisher” is much too vague and general a term. It is necessary that a conviction under this Act should specify the particular act : (*Reg. v. Mackenzie*, 17 Cox C. C. 542 ; 67 L. T. Rep. 201 ; (1892) 2 Q. B. 519 ; 61 L. J. 181, M. C.). That case decided that the acts with a view to compel the prosecutor to abstain from doing which the defendant followed the prosecutor must be set out in the conviction. That was a case under the same statute.

*CAVE, J.*—I am of opinion that these rules must be discharged. The commitments expressly stated that the prisoners did unlawfully, wrongfully, and without legal authority, follow the man Timms with a view to compel him to abstain from working as a shoe-finisher. In my opinion that is a perfectly good and sufficient mode of specifying the offence with which the prisoners were charged, and for which they were convicted. I entertain some doubts whether the convictions would not have been perfectly good even if the commitments had only followed the very words of the statute. In that respect I share the doubts expressed by Bruce, J. in *Reg v. Mackenzie (ubi sup.)* where he said that he was inclined to think that if the conviction had followed the words of the Act, even although it did not specify the particular Act which the informant was intended to be prevented from doing, it would have been sufficient. But the facts in that case are very different from those in the present one. There the conviction did not follow the words of the statute ; it merely said that the defendants endeavoured to compel the prosecutor to abstain from doing “acts which he had a legal right to do,” and it was mainly on that point that the decision turned. There the Court refused to amend. We are not asked to amend here, and had we been so asked I do not think there would have been any necessity for us to have done so. The object of sect. 7 is to deal with persons who follow others with the object of preventing

them from working in their employment. That is the offence pointed out in the section. That very offence has been charged here. I am of opinion that the commitments in this case were perfectly good, and that this application must be refused.

LAWRENCE, J.—I agree.

Solicitors : *Samuel Price and Sons.*

*Rule refused.*

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to compel  
abstention  
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ment—Form  
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Conspiracy  
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perty Act,  
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## QUEEN'S BENCH DIVISION.

*Thursday, May 2, 1895.*

(Before CHARLES and WRIGHT, JJ.)

THE COUNTY COUNCIL OF KENT (apps.) v. HUMPHREY (resp.). (a)

*Weights and measures—Coal dealer—Weighing machine—Bye-law requiring coal dealer to provide—Validity of bye-law—Weights and Measures Act, 1889 (52 & 53 Vict. c. 21), s. 28.*

*Sect. 28 of the Weights and Measures Act, 1889, gives a local authority power to make bye-laws requiring a weighing instrument to be carried with any vehicle in which coal is carried for sale or delivery to a purchaser.*

*Held, that the local authority has power, under this section, to make a bye-law requiring every coal dealer to provide, and every person employed by him in conveying or carrying coal for sale or delivery to a purchaser from or out of any vehicle to carry therewith, a correct and stamped weighing machine of the form approved by the local authority : and that the validity of this part of the bye-law is not affected by the question of the validity or invalidity of a subsequent part of the same bye-law requiring the coal dealer to reweigh the coal.*

CASE stated by justices.

At a petty sessions holden at Dartford, in the county of Kent, on the 5th day of January, 1895, the respondent was charged by an inspector of weights and measures to the Kent County Council, being the local authority for the county, for that he, on the 1st day of December, 1894, being a coal dealer, did unlaw-

(a) Reported by W. W. ORR, Esq., Barrister-at-Law.



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machine—  
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c. 21, s. 28.

fully fail to provide for his servant, who was then on his behalf conveying coal for delivery from a vehicle to a purchaser for carriage therewith, a correct and stamped weighing machine of the form approved by the Kent County Council, contrary to a bye-law duly made by the county council, and approved by the Board of Trade.

Upon the hearing of the information it was proved or admitted that the bye-law in question was duly made and published by the appellants, as required by the Weights and Measures Act, 1889, s. 28, and approved by the Board of Trade as provided by the same section; that the appellants had duly approved a form of weighing machine for the purposes of the bye-law; that the respondent was a coal dealer, whose servant was on the 1st day of December, 1894, carrying in a waggon half a ton of coal for delivery to a purchaser; that an inspector saw the servant delivering the coal and asked him to weigh the same, but the servant replied that he could not, as he had no scales or weights, and that the respondent, in answer to the inspector, said that he had told the servant to leave the scales and weights behind.

The Weights and Measures Act, 1889 (52 & 53 Vict. c. 21), provides :

Sect. 28.—(1.) Any local authority may from time to time make, revoke, and alter bye-laws . . . (b) requiring, either generally or in specified classes of cases, a weighing instrument, of a form approved by the local authority, to be carried with any vehicle in which coal is carried for sale or delivery to a purchaser; and may by such bye-laws impose fines, recoverable summarily, and not exceeding in each case five pounds, for the breach of any such bye-law.

(2.) Every bye-law made under this section shall be approved by the Board of Trade, and published in such a manner as the local authority may think sufficient for giving notice to all persons interested.

Under the provisions of this section the appellants made the following bye-law :

Every coal dealer shall provide, and every person employed by him who shall convey or carry coal for sale or delivery to a purchaser from or out of any vehicle shall carry therewith, a correct and stamped weighing machine of the form approved by the county council, and such person shall re-weigh the coal upon being requested to do so by the purchaser or anyone on his behalf, or by an inspector of weights and measures. Any person failing to observe this bye-law is liable to a penalty of 5*l*.

The justices were of opinion that the bye-law was *ultra vires*, invalid, and indivisible, and they dismissed the information.

*Hohler* for the appellants.

The respondent did not appear.

CHARLES, J.—We think the justices did not come to a correct decision. We think there was power to make the bye-law in question, which rendered it needful for every coal dealer conveying or carrying coal for sale or delivery to a purchaser from or out of any vehicle to provide and carry a correct weighing machine. We think that the bye-law is beyond all doubt within their competence, having regard to the language of the Act. The suggestion that because the requirement on the coal dealer

to re-weigh the coal might be invalid, that rendered the whole bye-law bad, does not seem to have any foundation. The substance of the bye-law is that it requires the carrying of a weighing instrument. As to the latter part of the bye-law, which requires the re-weighing of the coal, I may remark that the expression "shall re-weigh the coal," is an inaccurate one; it should be "shall weigh the coal." It is unnecessary for us to pronounce any decision as to whether or not it comes within sect. 28 of the Weights and Measures Act, 1889. I may also remark that sub-sect. (a) of that section gives power to regulate the sale of coal when sold in quantities not exceeding two hundredweight.

WRIGHT, J.—I agree. It is possible that the provision requiring that weights shall be carried may imply an authority to make a bye-law as to their use.

*Appeal allowed.*

Solicitors for the appellants, *Palmer and Bull*, for *Brennan and Turner*, Maidstone.

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## QUEEN'S BENCH DIVISION.

*Friday, Aug. 2, 1895.*

(Before POLLOCK, B. and WRIGHT, J.)

STODDART AND OTHERS (apps.) v. SAGAR (resp.).

SAGAR (app.) v. STODDART AND OTHERS (resps.). (a)

*Gaming—Betting—Lottery — Coupon competition — Prizes for selecting winners in horse races—Issue of coupons attached to newspaper—Lottery Acts (42 Geo. 3, c. 119, s. 2; 4 Geo. 4. c. 60), s. 41—Betting Acts 1853 and 1874 (16 & 17 Vict. c. 119, ss. 1, 3, 4; 37 Vict. c. 15, s. 3, sub-sect. 3).*

*The appellants, who were respectively the proprietor and publisher of a certain newspaper, and the owner and occupier of the office where it was published, all having the care and management of the business, published in their paper a "coupon competition," which consisted of a prize offered for selecting the winners in a specified horse race. In a certain issue of their paper they offered*

(a) Reported by W. W. ORR, Esq., Barrister-at-Law.

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winners of  
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c. 119, s. 2;

4 Geo. 4, c. 60,

s. 41; 16 & 17

Vict. c. 119,

ss. 1, 3, 4;

37 Vict. c. 15,

s. 3 (3).

a prize of 100l. for placing the 1st, 2nd, 3rd, and 4th in the "Grand National," which was to be run a few days after. In the newspaper, and underneath this notice, were the coupons, of which there were twenty-five in number. According to the "coupon conditions," the first coupon could be filled up, cut out, and sent in for the competition free of charge, and a competitor was not required to use more than the one free coupon if he so desired. There was no limit to the number of coupons that might be sent in, but if any of the other twenty-four blank coupons were sent in, one penny stamp would have to be sent with each, and if the whole twenty-five were sent in 2s. would have to be sent. Predictions could also be sent on plain paper if accompanied by one free coupon, and if more than one competitor succeeded in getting the prize, the money was to be divided equally. Remittances were received at the office in respect of the competition.

*Held, that this competition did not constitute a lottery within the meaning of the Lottery Acts, and that the appellants had not committed any offence either under the Lottery Acts or under the Betting Acts, 1853 and 1874.*

TWO cases stated by Alderman Knill, sitting as a court of summary jurisdiction at the Mansion House, in the city of London, on the 18th day of April, 1895.

#### STODDART AND OTHERS (apps.) v. SAGAR (resp.).

Three several informations were preferred by the respondent, Sagar, under the Act to suppress certain games and lotteries—42 Geo. 3, c. 119—and the Acts amending the same, against the appellants, Ada Stoddart, Joseph Stoddart, and Frederick Brandon, and these informations were heard together.

These three informations charged the appellants with the following offences :

(1.) That Ada Stoddart did, on the 26th March, 1895, unlawfully and publicly open and keep an office at 53, Fleet-street, to exercise by a certain contrivance and device called a coupon competition a lottery not authorised by Parliament, contrary to the provisions of the Act 42 Geo. 3, c. 119, s. 2, and that the other two appellants did unlawfully and knowingly aid and abet in the same.

(2.) That Ada Stoddart did, on the same day, unlawfully sell certain tickets and chances in a lottery, to wit, a lottery called a coupon competition, contrary to the provisions of the Lottery Act, 1823 (4 Geo. 4, c. 60), s. 41, and that the other two appellants did aid and abet in the commission of the said offence.

(3.) That Frederick Brandon did, on the same day, unlawfully publish a certain proposal or scheme, to wit, a proposal and scheme called a "coupon competition" for the sale of certain tickets and chances in a certain lottery contrary to the 4 Geo. 4, c. 60, s. 41, and that the other two appellants did aid and abet in the commission of the said offence.

The appellants were convicted of the three several offences, and each of them was ordered to pay the sum of 10s. upon each of the informations.

At the hearing the following facts were proved :

Ada Stoddart was the occupier of an office situate at 53, Fleet-street, and was the registered proprietor of a newspaper called *Turf Life*. She sold copies of the said newspaper published on the 26th day of March, 1895, and she opened and kept the office for the purpose of carrying on the business of *Turf Life*, and for the purpose of receiving all remittances relating to the business of the newspaper, including remittances in respect of the "coupon competition; and she, in fact, received remittances relating to the copies of the said newspaper issued on the 26th day of March, 1895, including remittances in respect of the "coupon competition" advertised in that number.

The appellant, Joseph Stoddart, was the owner of the office, and permitted the office to be used for the purpose of the circulation of the newspaper, with knowledge of all its contents. He, jointly with the appellant Brandon, had the care and management of the business of the newspaper, and assisted in conducting the business, which, during the period named in the summonses, included the coupon competition of the 26th day of March, 1895.

The appellant Brandon was the publisher of the newspaper, and he published the copies of the newspaper issued on the 26th day of March, 1895, with knowledge of the contents thereof; and he, jointly with the appellant, J. Stoddart, had the care and management of the business of the newspaper, and assisted in conducting the business.

The conditions of the coupon competition appeared in the newspaper issued on the 26th day of March, 1895. At the top were the words: "100*l.* for placing 1st, 2nd, 3rd, 4th in the Grand National (Run next Friday). Note the conditions." Then, underneath, were the coupons. There were four spaces across the paper, marked first, second, third, fourth, and there were twenty-five coupons, the first coupon being free. Then, underneath the coupons were spaces for the name and address of the sender, and this notice: "Two shillings must be remitted if all the above coupons are used." The coupon conditions contained these provisions: "If more than one succeed in securing the prize, the money will be equally divided amongst them. The No. 1 coupon in the above column can be used free of charge. This coupon can be filled up, cut out, and despatched to us, and will be accepted for competition without any charge or fee being sent with it. If, however, the remaining twenty-four blank coupons are used, one penny stamp must be sent with each of these coupons so used. Thus, if twenty-five different attempts are made on the above sheet to correctly arrive at the winners, 2*s.* must be remitted. In all cases the coupon marked No. 1 is free. The extra coupons are included in each issue for those who experience a difficulty in obtaining *Turf Life*, so that predictions can thus be forwarded on the extra coupons, but must

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c. 119, s. 2;  
4 Geo. 4, c. 60,  
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be accompanied by one penny stamp with each extra coupon. There is no limitation to the number of coupons to be sent in. Predictions can also be made on plain paper on the same terms, but one free coupon at least must accompany same, to show that the competitor is a subscriber to *Turf Life*. There is no compulsion to use any more than the one free coupon, if the competitor desires to confine himself to one attempt. All coupons must be addressed, "Coupon Competition, *Turf Life*, &c. The three winners must be on any one coupon."

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The magistrate found as a fact that the winning of the prize in the competition would be determined by choice and not by skill.

It was contended on behalf of the respondent that the conditions of the coupon competition, together with the other above-stated facts (which were not disputed), were sufficient in law to support convictions against the appellants for the offences charged in the informations.

It was contended on behalf of the appellants that the said conditions and above-mentioned facts were not sufficient in law to support convictions under the informations.

The magistrate, after consideration of the authorities cited, was of opinion that the facts were sufficient in law to support the offences in the three informations under the Lottery Acts, and he convicted the appellants on the three informations.

The question for the opinion of the Court was whether the magistrate came to a correct determination in point of law.

### SAGAR (app.) v. STODDART AND OTHERS (resps.).

Five several informations were preferred by the appellant against the respondents, and were heard together.

These informations charged the respondents with the following offences :

(1.) That Ada Stoddart, on the 19th day of March, 1895, and on divers other days between that date and the 9th day of April, 1895, being the occupier of a certain office and place, did unlawfully open, keep, and use the said office and place for the purpose of money being received on behalf of the said occupier as and for the consideration for an assurance and undertaking to pay thereafter money on events and contingencies relating to horse-races, and that the other two respondents did unlawfully and knowingly aid, abet, and procure the commission of the said offence, contrary to the Betting Act, 1858, sects. 1 and 3.

(2.) That the respondents, Joseph Stoddart and Brandon, on the aforesaid dates, did unlawfully have the care and management, and did unlawfully conduct and assist in conducting the business of the said office which was then opened, kept, and used for the purpose aforesaid, and that the respondent, Ada Stoddart, did unlawfully aid and abet and procure the commission of the offence, contrary to the Betting Act, 1858, sects. 1 and 3.

(3.) That Ada Stoddart, being the occupier of the said office then opened, kept, and used for the purpose aforesaid, did unlawfully and knowingly receive certain moneys as deposits on bets on condition of paying the sum of 100*l.* in money on the happening of certain events and contingencies relating to horse-races, and that the other two respondents did aid, abet, and procure the commission of the offences contrary to the Betting Act, 1858, sects. 1 and 4.

(4.) That the respondent, Joseph Stoddart being the owner of the office, did unlawfully and knowingly permit the said office to be unlawfully opened, kept, and

used by the said Ada Stoddart for the purpose of money received by the occupier as and for the consideration for an assurance and undertaking to pay thereafter money on events and contingencies relating to horse races, and that the two respondents did aid and abet the commission of the offence, contrary to the Betting Act, 1853, sects. 1 and 3.

(5.) That the respondent Brandon did, on the 26th day of March, 1895, unlawfully and knowingly publish an advertisement of a competition called a "coupon competition" in the newspaper called *Turf Life*, inviting all who read the advertisement to make and take shares in certain bets and wagers on such events and contingencies as are mentioned in the Betting Act, 1853, and that the other two respondents did abet, aid, and procure the commission of the said offence, contrary to the Betting Act, 1874, sect. 3, sub-sect. 3.

The facts proved were the same as in the previous case, and had reference to the issue of five numbers of *Turf Life*, containing similar competitions, though the informations had reference only to the "coupon competition" announced in the issue of the 26th day of March.

It was contended on behalf of the appellant that the conditions of the said "coupon competition," together with the other facts (which were not disputed) were sufficient in law to support convictions against the respondents for the offences under the Betting Acts, 1853 and 1874, charged against them in the informations.

It was contended on behalf of the respondents that the said conditions and above-mentioned facts were not sufficient in law to support convictions under the said informations.

The magistrate was of opinion that the above facts were not sufficient in law to support any of the offences charged under the Betting Acts, 1853 and 1874, and he accordingly dismissed the five informations.

The question for the opinion of the Court was whether the learned alderman came to a correct determination in point of law.

Carson, Q.C. (*Grain* and *L. Kershaw* with him) for the appellants in the first case as to the lottery. The appellants, who were respectively the occupier and owner of the office where the newspaper was published, and the proprietor and publisher of the paper were convicted here of having organised a lottery under the Lottery Act, and the question is whether the contrivance resorted to in this case was a lottery within the meaning of the Act, that is, whether a proposal to fill in the coupon the winners of a certain horse race is a lottery. We submit that it is not, and that it has never been successfully attempted to bring a case of this kind within the Lottery Act. In the case of *Barclay v. Pearson*, 68 L. T. Rep. 709; (1893) 2 Ch. 154—the case of the missing word competition—the filling in of missing words was held to be a lottery, and the reason it was so held was that that depended upon mere chance, the question really being whether the person has exercised any skill on his part, or has been driven to take his chance. The same principle was laid down in *Taylor v. Smetton* (11 Q. B. Div. 207), where the transaction was held to be a lottery for the same reason. Hawkins, J., in delivering the considered judgment in that case, said (at p. 212): "The purchaser

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c. 119, s. 2;  
4 Geo. 4, c. 60,  
s. 41; 16 & 17  
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bought the tea coupled with the chance of getting something of value by way of a prize, but without the least idea of what that prize might be. In making his purchase he exercised no choice—what he got he got without any option or action of his own will, but as the result of mere chance or accident.” Those cases, as well as the case of *Oaminada v. Hulton* (64 L. T. Rep. 572; 17 Cox C. C. 307), show that to be a lottery within the meaning of the Lottery Act there must be a contrivance or device to obtain money by chance. The facts and decision in *Caminada v. Hulton* (*ubi sup.*), where the transaction was held not to be a lottery, are really conclusive of both the present cases. [WRIGHT, J.—That case is exactly in point.]

*R. D. Muir* for the respondents in the first case, and for the appellant in the second submitted that:—It must be a question of degree how far the matter in question is decided by chance, and how far it is decided by skill. [WRIGHT, J.—Is it open to us to decide this in your favour against *Caminada v. Hulton* (*ubi sup.*)?] The case of *Caminada v. Hulton* (*ubi sup.*) is very clearly distinguishable from the present case. In that case, Day, J. said in his judgment, “I am clearly of opinion that this was not a lottery,” and the reason he gives for that opinion is important, “for there was no contrivance or device to obtain money by chance, and therefore it does not come within the scope of the Act.” In the present case the appellants allow in their newspaper any number of attempts or chances. Skill cannot have very much to do with the matter if a person has—as he has in this case—twenty-five attempts to do the thing, and moreover, although there are only twenty-five spaces, the appellants allow any number beyond the twenty-five on blank paper at one penny a piece. That was the ground upon which the magistrate found that there was an element of chance, and it is most important to remember that the magistrate has found as a fact that the winning of the prize in the competition would be determined by chance, and not by skill. While that is so, I admit that, if to be a lottery, it must be a pure chance for every person who enters into the competition, then this is not a lottery. Here, however, it is not so. With regard to the second case he also submitted that the conditions of this competition, which are in the newspaper, bring the present case within the exact words of sect. 1 of the Betting Act of 1853, which says that “no house, office, room, or other place, shall be opened, kept, or used, for the purpose of the owner, occupier, &c., betting with persons resorting thereto; or for the purpose of any money being received by such owner, occupier, or keeper, &c.” These things are exactly what the respondents in this case did. They kept this office, and they advertised that moneys were to be sent there; and that if that is good for one penny, it is good for one pound equally, so that this office was nothing but a mere betting house. [WRIGHT, J.—How do you get over *Caminada v. Hulton*?] There, there was no money given at all for the betting, apart

from the price of the book. When the purchaser bought his book, he got value for his money; here, for his penny, he gets only a chance. In *Wright v. Clarke* (34 J. P. 661), and the two other cases there reported, money was sent by letter to a person who kept a house or office for the purpose of executing commissions to bet on horse races, and it was held that that person kept open an office for betting within the meaning of sect. 1 of the Betting Act of 1853. The fact that here the purchaser for his one penny buys only a chance, brings this case within every definition of a bet (*Carlill v. The Carbolic Smoke Ball Company*, 67 L. T. Rep., at p. 839; (1892) 2 Q. B., at pp. 490-91), where Hawkins, J. says: "It is essential to a wagering contract that each party may under it, either win or lose, &c." Here, both parties may win and both may lose, which brings the case within that description. The question intended to be reserved here was: is this a betting-house or is it not? The magistrate found, on the facts, that it was not; but I submit the magistrate was wrong, as this case comes exactly within the definition of betting as given by Hawkins, J. in the case just referred to. Here it is found that the office is kept for the receipt of these sums of money, and that brings it within the Act.

POLLOCK, B.—I in no way propose to give any definition as to what is, or what is not, betting. It is extremely difficult to do so, and although I think that Hawkins, J. in the *Carbolic Smoke Ball* case (*ubi sup.*) did so with great accuracy as applicable to that case in particular, it would be very undesirable if I attempted in this case to give a general definition of betting. But I am clearly of opinion that in the present case the learned alderman having said that upon these facts as stated he has come to the conclusion that they were not sufficient to support any of the offences charged under the Betting Acts, was well within his jurisdiction; and if the learned counsel, who appeared before him, intended to present any other argument they ought to have done so at the time. The defendants having been acquitted upon the alderman's finding, we certainly ought not to send the case back. As the case stands there is nothing to show the criminal intent which would bring the defendants within the statute. I am strengthened in that opinion by what was said by my brother Day, which seems to me very conclusive, in the case of *Caminada v. Hulton* (*ubi sup.*), where he says: "It might be said, but I think with considerable difficulty, that this is a bet because a person by paying a penny for one of these books and returning the coupon to the respondent backed six horses." That is the clearest way he could put it. Then he says: "But I think that is clearly not the correct view to take, and that this is not a bet within the meaning of the statute. A person purchasing one of these books did not, even if he was not successful in obtaining one of the prizes offered, lose any money by the transaction." I think that was clear, sound, and vigorous reasoning, which shows that this is not betting, and on that ground I am perfectly

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satisfied. As to the meaning of the word "lottery," my learned brother, Day, J. is clear: "I am clearly of opinion that this was not a lottery, for there was no contrivance or device to obtain money by chance." That is to say, a horse race is clearly not a matter of chance. Upon the running of the four horses named as the first, second, third, and fourth, and their being placed as the first, second, third, and fourth, the event depended. That shows with equal clearness that this was not a lottery.

WRIGHT, J.—I am of the same opinion. This is clearly not a lottery. Then as regards the Betting Act, the case is much more difficult and much more important. I have no doubt that such a competition as this may be in truth only betting in disguise; and it would be quite easy to suggest cases in which the magistrate could hardly come to any other conclusion in point of fact than that such competitions were betting in disguise. That is to say, if he found as a fact, in the language of the section, that the office or place was kept for the purpose of money and so forth being received as the consideration for an assurance to pay thereafter money and so forth on an event relating to a horse race; or if he found in other words the same thing, namely, that it was a wagering contract, then I think the Betting Act would be held to be applicable. But in the present case there is no such finding by the magistrate, and it would be contrary to all rules if we took on ourselves to find it.

*Appeal allowed and conviction quashed in the first case as to the lottery. Appeal dismissed in the case under the Betting Acts.*

Solicitors for the appellants, C. O. Humphreys, Son, and Kershaw.

Solicitor for the respondent (Sagar), H. H. Crawford.

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## QUEEN'S BENCH DIVISION.

*Wednesday, July 31.*

(Before GRANTHAM and WRIGHT, JJ.)

THE WOOLWICH LOCAL BOARD (apps.) v. GARDINER AND ANOTHER  
(resps.). (a)

*Licensed hawker—Pedlars — Pedlar's certificate—Whether a pedlar's certificate entitles holder to act as "licensed hawker"—Market and Fairs Clauses Act, 1847 (19 Vict. c. 14), s. 13; Pedlars Act, 1871 (34 & 35 Vict. c. 96), s. 6; Pedlars Act, 1881 (44 & 45 Vict. c. 45), s. 2.*

*By sect. 6 of the Pedlars Act, 1871, a certificate under that Act is to have the same effect as a hawker's licence for the purpose of the Markets and Fairs Clauses Act, 1847, and the term "licensed hawker" shall be construed to include a pedlar holding such a certificate; and by sect. 13 of the Markets and Fairs Clauses Act, 1847, a penalty is imposed upon every person "other than a licensed hawker, who sells in a market, except in his own dwelling place or shop, any articles in respect of which tolls are authorised to be taken in that market.*

*A person who held a pedlar's certificate, but not a hawker's licence, in a market sold or exposed for sale in a cart drawn by a horse articles in respect of which tolls were authorised to be taken in that market:*

*Held, that such person, although he held a pedlar's certificate, was not a "licensed hawker" by virtue of sect. 1 of the Pedlars Act, 1871, as the word "pedlar" in that section means a pedlar when he is acting as a pedlar, and that therefore he was not exempted by the pedlar's certificate from the penalty imposed by sect. 13 of the Markets and Fairs Clauses Act, 1847.*

*Howard v. Lupton (L. Rep. 10 Q. B. 598) considered.*

CASE stated by Mr. Marsham, metropolitan police magistrate, sitting at Woolwich Police-court.

1. At a police-court, holden at Woolwich on the 1st day of Feb., 1895, and by adjournment on the 23rd day of Feb. and on the 6th day of April, 1895, complaint was made by the Woolwich Local Board of Health (the appellants) under sect. 13 of the Markets and Fairs Clauses Act, 1847, that Clifford Gardiner and Maria Gardiner, the above-named respondents, had sold or exposed for sale in a cart drawn by a horse on the 29th day of

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Jan., 1895, in Ogleby-street, Woolwich, within the said police district and within the limits of the market owned by the said board, articles, namely, potatoes, in respect of which tolls are and were authorised to be taken in the said market.

2. The facts alleged in the said complaint were proved, and it was either proved or admitted that the appellant board was a local authority within the meaning of the Public Health Act, 1875 (38 & 39 Vict. c. 55), and the Pedlars Act, 1871 (34 & 35 Vict. c. 96), and as such authority was the owner of a market to which sect. 13 of the Markets and Fairs Clauses Act, 1847, applied; and that portion of such market had been set aside by the said board in which vehicles might be stored upon payment of 2s. 6d. a day.

3. It was also proved that neither of the respondents held a hawker's licence, and that each of them held a pedlar's certificate obtained under the Pedlars Act (34 & 35 Vict. c. 96), which certificate, by sect. 2 of the 44 & 45 Vict. c. 45, authorises the person to whom it is granted to act as a pedlar within any part of the United Kingdom. And by sect. 6 of the 34 & 35 Vict. c. 96, a pedlar's certificate under this Act is for the purposes of the Markets and Fairs Clauses Act, 1847, to have the same effect within the district for which it is granted as a hawker's licence, and the term "licensed hawker" in the Markets and Fairs Clauses Act, 1847, is to be construed to include a pedlar holding such certificate. By sect. 24 of the 34 & 35 Vict. c. 96, nothing in this Act shall take away or diminish any of the powers vested in any local authority by any general or local Act in force in the district of such local authority.

4. By sect. 3, sub-sect. (c.), of 51 & 52 Vict. c. 38, it is not necessary for a hawker's licence to be taken out by a person selling fish, fruit, victuals, or coal. And by sect. 23, sub-sect. 2, of 34 & 35 Vict. c. 96, nothing in this Act is to render it necessary for a certificate to be obtained by sellers of vegetables, fish, fruit, or victuals. The word "victuals" has been held to include barm or yeast: (*Rex v. Hodgkinson*, 10 B. & C. 74.)

5. On behalf of the respondents it was contended, on the authority of *Howard v. Lupton* (L. Rep. 10 Q. B. 598) that they were, by virtue of sect. 6 of the Pedlars Act, 1871, licensed hawkers for the purposes of sect. 13 of the Markets and Fairs Clauses Act, 1847, and therefore exempt from the penalties prescribed by the latter section.

1. On behalf of the appellant board it was contended that the effect of sect. 6 of the Pedlars Act, 1871, was merely that the term "licensed hawker" in sect. 13 of the Markets and Fairs Clauses Act, 1847, was to be construed to include the persons whom the term "pedlars" was defined by sect. 3 of the Pedlars Act, 1871, to mean, namely, "any hawker, pedlar, petty chapman, tinker, caster of metals, mender of chairs, or other persons, who, without any horse or other beast bearing or drawing burden, travels and trades on foot, and goes from town

to town, or to other men's houses, carrying to sell, or exposing for sale any goods, wares, or merchandise, or procuring orders for goods, wares, or merchandise, immediately to be delivered, or selling, or offering for sale his skill in handicraft," And that neither of the respondents came within this definition at the time of the acts complained of. That a pedlar's licence issued by the police for 5s. was not equal to a hawker's licence costing 2l., and that the defendants were liable to be prosecuted by the Inland Revenue for hawking with a horse and cart having only a pedlar's licence. Further that though a pedlar could peddle, and a hawker could hawk, yet that a pedlar could not legally hawk, and that sect. 24 of the Pedlars Act, 1871, specially reserves the powers of a local authority to protect its market.

7. The learned magistrate was of opinion that in the face of the decision in *Howard v. Lupton*, he was bound to dismiss the summons, which he accordingly did. The appellants being satisfied with the decision as being wrong in law, duly required the magistrate in writing to state a case for the opinion of the High Court of Justice; and as there has been some alteration in the law by 44 & 45 Vict. c. 45, s. 2, since the case of *Howard v. Lupton* (*ubi sup.*) was decided, he agreed to do so.

The question for the opinion of the Court was whether or not the magistrate was bound in law to dismiss the summons.

The nature of the arguments is sufficiently indicated in the special case.

*R. Ounningham Glen* (with him *Channell*, Q.C.) for the appellants.

*Travers Humphreys* for the respondents.

GRANTHAM, J.—We have no doubt in this case that we are not bound by the decision in *Howard v. Lupton* (*ubi sup.*), and we are both of opinion that we ought not to follow it. The question it is necessary to consider in this case is whether the word "pedlar" in sect. 6 of the Act of 1871 means any pedlar, or whether it means only a pedlar when he is acting as a pedlar, and going about peddling. When we consider that the statute has thought fit to define what a pedlar is, and when we look at the language of the Act, to my mind it is perfectly clear that it means a person who is a pedlar, when he is acting as a pedlar with a pedlar's licence; and that it is not necessary for us to read any words into the section for the purpose of construing the same. It seems to me that the language of the section is sufficient to show that if a person is not acting as a pedlar it was not intended to cover him and bring him within the definition. Under these circumstances I think the learned magistrate was wrong, and that the case must go back.

WRIGHT, J.—I am of the same opinion. I do not desire to criticise the case of *Howard v. Lupton* (*ubi sup.*) further than this: We come to the same conclusion as Lush, J. It seems to me evident that at any rate Mellor, J. would have looked at the case very differently if the Act 44 & 45 Vict. c. 45, had been in

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force when he decided that case, and I am not sure whether Blackburn, J. would not have done so also. They both appear to have been very much affected by the consideration that the definition of pedlar was confined to a special district, or a special division.

*Appeal allowed; no costs.*

Solicitor for the appellants, *Edwin Hughes*.

Solicitor for the respondents, *O. O. Pook*.

### QUEEN'S BENCH DIVISION.

*Wednesday, June 26, 1895.*

(Before WRIGHT and WILLS, JJ.)

REG. v. SLADE, (Metropolitan Police Magistrate) AND  
OTHERS; *Ex parte* SAUNDERS. (a)

*Public Health (London) Act, 1891 (54 & 55 Vict. c. 76)—Premises unfit for habitation—Closing order—Continuing offence—Limitation of time—Conviction—Certiorari—Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 11—Amendment—Baines' Act (12 & 13 Vict. c. 45), s. 7.*

*On a conviction for wilfully and knowingly acting contrary to an order to close certain premises as unfit for human habitation the magistrate inflicted a fine of a shilling a day for the whole period during which the offence had continued (193) days.*

*Held, that the conviction was bad as contrary to the six months' limitation of sect. 11 of the Summary Jurisdiction Act, 1848.*

*Held, further, that the conviction could not be amended under sect. 7 of Baines' Act, since the mistake was not one made in drawing up the conviction, but a mistake of law.*

THIS was an order *nisi* calling upon Wyndham Slade, Esq., a metropolitan magistrate, sitting at Southwark Police-court, and the St. Saviour District Board of Works, Southwark, to show cause why a writ of *certiorari* should not issue to remove the record of a certain conviction of Francis Saunders into the High Court, and why, when the conviction was returned, the same should not be quashed on the grounds that it included a period of more than six calendar months before the matter of the complaint or information arose, and that penalties are inflicted in it for more days than can be legally imposed.

Saunders was the owner of a certain dwelling-house at No. 75, Blackfriars-road, Southwark. On the 4th day of January, 1894

(a) Reported by G. H. GRANT, Esq., Barrister-at-Law.

he appeared, on the summons of the St. Saviour District Board of Works, before the magistrate sitting at Southwark Police-court for failing to comply with a notice to abate a nuisance arising from the dwelling-house before mentioned. The magistrate, being satisfied that the dwelling-house was unfit for human habitation, made a closing order under sect. 5, sub-sect. 6, of the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76).

On the 29th day of November, 1894, Saunders again appeared before the magistrate sitting at Southwark Police-court on the summons of the St. Saviour District Board, and was convicted under sect. 5, sub-sect. 9 of the Public Health (London) Act, 1891, of having knowingly and wilfully acted contrary to the closing order of the 4th day of January during a period of 193 days, namely, from the 1st day of February to the 12th August. He was thereupon fined 9*l.* 13*s.*, "being 1*s.* per day for each of the 193 days aforesaid."

On the 24th day of May, 1895, the order *nisi* to quash the conviction, on the grounds already mentioned, was granted.

*F. Dodd* now showed cause.—The conviction is good, but, if not good, the mistake is one that may be amended. Sect. 5 of the Public Health (London) Act, 1891, contains no limit as to the time for which penalties can be inflicted. The offence here is a single continuing offence, not a series of separate and distinct offences occurring on as many separate days: (*London County Council v. Worley*, 10 Cox C. C. 37; 71 L. T. Rep. 487; (1894) 2 Q. B. 826.) That being the case, sect. 11 of the Summary Jurisdiction Act, 1848, is satisfied if the offence continued up to within six months of conviction: (*Higgins v. Northwich Union*, 22 L. T. Rep. 752; *Reg. v. Waterhouse*, 26 L. T. Rep. 761; L. Rep. 7 Q. B. 845; *Reg. v. Catholic Fire Insurance Association*, 48 L. T. Rep. 675). As to amendment under sect. 7 of Baines' Act: (*Reg. v. Walker*, 45 J. P. 682.) [WRIGHT, J.—There is no power to amend save where the mistake is one made in drawing up the conviction.] Here the mistake is one made in drawing up the conviction. There was no necessity for mentioning the number of days. At any rate the mistake was immaterial, as the magistrate had power to inflict a much larger fine than that actually inflicted.

WILLS, J.—In this case the conviction is clearly wrong, and must be quashed. It is impossible to read it and not to see that the offence of which Saunders was convicted has been treated as an offence continuing during one hundred and ninety-three days. Of these twelve were statute-barred. We cannot take the conviction to pieces and say that one part of it is good and the other part bad. The conviction is for the whole period between 1st February and 12th August, and as part of the period is outside the six months' limit imposed by sect. 11 of the Summary Jurisdiction Act, it cannot stand.

WRIGHT, J. concurred.

Solicitor for the defendants, *R. J. Tickle*.

Saunders in-person.

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## QUEEN'S BENCH DIVISION.

*Tuesday, June 11, 1895.*

(Before WILLS and WRIGHT, JJ.)

PLETTS v. CAMPBELL. (a)

*Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 3—Sale of liquor elsewhere than on licensed premises.*

*The appellant held an off licence for the sale of beer by retail. His practice was to employ a carter, who went round to the customers' houses every week with a cart from which he delivered jars of beer, and received orders for the following week. The carter in this way received an order from a customer at the customer's own house for a jar of beer which was the following week delivered from the cart at the house and there paid for. The jar was one of several gallon jars, none of which were distinguished by any label or other mark from other similar jars in the cart.*

*Held, that the sale of beer to the customer took place at the latter's house and not on the licensed premises, and the appellant was therefore properly convicted under sect. 3 of the Licensing Act, 1872, of selling intoxicating liquor at a place where he was not authorised by his licence to sell the same.*

**C**ASE stated by Quarter Sessions of Lancashire upon an appeal against a conviction by the petty sessions of Blackburn Lower, whereby the appellant was convicted under sect. 3 of the Licensing Act, 1872, of selling intoxicating liquor on the 24th day of May, 1894, at a certain house, No. 142, High-street, Rishton, where he was not then authorised by his licence to sell the same, he then being duly licensed to sell by retail certain intoxicating liquors in his house and premises, No. 11 Stanley-street, Burnley. The Court of Quarter Sessions allowed the appeal, subject to this case.

The appellant was a brewer, who held a licence under 11 Geo. 4 & 1 Will. 4, c. 64, and the Acts amending the same, for the sale of beer by retail at 11, Stanley-street, Burnley, such beer to be consumed off the premises.

On the 26th day of May, 1894, one Greenwood, a person in the appellant's employ, delivered from a cart driven by him a stone jar containing a gallon of beer, to the wife of one Moore, at 142, High-street, Rishton, in payment for which he was to have received and did receive 1s. on the appellant's behalf on the 2nd day of June. The evidence showed a course of dealing for about eight

(a) Reported by G. H. GRANT, Esq., Barrister-at-Law.

months prior to the 26th day of May, whereby Greenwood delivered from the appellant's cart, carriage free, one gallon of beer per week to Moore or his wife, in pursuance of orders given to him by them the previous week. At each delivery he received 1s. for the beer delivered the previous week, and took back the empty jar. The week preceding the 26th day of May, Mrs. Moore gave Greenwood an order to bring a gallon of beer on that day, which order was entered (with others) by Greenwood in an order book kept by him to be shown to the appellant. On his return to Burnley, he made out a list of orders so received, which the appellant ordered to be executed. On the 26th day of May, Greenwood selected from the appellant's stores at Stanley-street, the goods necessary to execute the orders aforesaid, and no more. The jar delivered to Mrs. Moore was not distinguished by any label or mark from similar jars, the goods being placed in the cart in the order in which the cart would arrive at the customers' houses. There was no evidence that either the appellant or Greenwood communicated to Moore or his wife the acceptance of the order for the gallon of beer for delivery on the 26th day of May otherwise than by the actual delivery of the beer to Mrs. Moore on that date.

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It was contended for the appellant that the sale of the said gallon of beer delivered to Mrs. Moore on the 26th day of May took place at the appellant's premises in Stanley-street; for the respondent that the sale, or a transaction in the nature of a sale, took place at Moore's house, 142, High-street, Rishton.

The Court of Quarter Sessions were of opinion that the sale of the beer took place on the appellant's licensed premises, and that the delivery to Moore at Rishton was not an offence within the meaning of sect. 3 of the Licensing Act, 1872, and quashed the conviction subject to the opinion of the High Court.

*Bigham, Q.C. (Ferguson with him)* for the respondent (the appellant here).—The sale of beer took place not on the licensed premises, but at the customer's house, where it was ordered, delivered, and paid for. The true test of a sale is the passing of the property, and here the customer had no property in the jar of beer until it was delivered.

*Poland, Q.C. (W. Mackenzie with him)* for the respondent (the brewer).—The sale from the cart was in effect a sale at the licensed premises. There is no mode of getting a licence to sell by a cart at the customer's door, yet the publican may surely deliver his beer to the customer by his cart. The transfer of the property is not the test, because there may be a contract for the sale of goods not yet in existence. See the Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 5, sub-sects. (1) (2). *Stretch v. White* (25 J. P. 485) is in point. There Lord Blackburn said that it was not necessary in order to constitute a sale within the 13th section of the Markets and Fairs Clauses Act, 1847, that there should have been a transmutation of property.

*Bigham, Q.C.* in reply.

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35 & 36 Vict.  
c. 94, s. 3.

WILLS, J.—In this case I think the original conviction by the petty sessions was right, and, but for a case cited to us upon another Act of Parliament, I should have thought the matter too clear for argument. In this instance, the publican who is licensed to sell beer upon his own premises sends out his traveller to take orders. That is, of course, equivalent to going himself. Then he selects jars of beer, and sends them out in carts to the purchasers' houses, where they are paid for. There is no evidence that any part of the transaction, except the fixing of the price, takes place on the licensed premises; everything else is at the purchaser's house. It was argued that a sale involved a transmutation of property, and that it is not complete until the property passes. I am prepared to agree that a sale cannot be completed without a transfer of property. But, without going into these matters minutely—which may be out of place with reference to this enactment—it is enough for me to say that every material part of this transaction took place at the purchaser's own house. It cannot make any difference whether the circumstances, which are said to be a selection of the jar, took place in the cart or at the licensed place. Evidently there was nothing at the licensed premises that amounted to an appropriation of any jar to a customer with his assent. Everything necessary to complete the appropriation of the jar took place at the cart, and I think there is no pretence for saying that there was a sale on the licensed premises. We were, however, pressed with the case of *Stretch v. White* (*ubi sup.*) The report there is not a very satisfactory one, and it is singular that the case is nowhere else reported. But, at any rate, the whole of the butter in that case seems to have been sold and appropriated, and, if so, the case differs from the present, and does not stand in our way. A decision based upon one Act of Parliament, in the nature of the Licensing Acts, is often a very fallacious argument when used in respect of another Act. It appears to me that the plain words of the statute in this case justify the conviction, and the appeal should be allowed.

WRIGHT, J.—I think Mr. Bigham went too far in saying that the word "sale," as used in this Act, necessarily meant a sale in the legal sense of the term. I think it may also mean an agreement to sell, and so it was in the case cited from the *Justice of the Peace*. While I agree that this conviction should be restored, I do not say but that a very slight difference in the mode of selling the beer—*e.g.*, if the barrel had been marked with the name of the purchaser—might have made all the difference. My decision is based on this specific ground—that it is impossible there can be a sale, or a bargain and sale, or a sale and delivery, at a place, unless there has been some appropriation of the article at that place; and here there was none.

Solicitors: *Ainsworth, Saunderson, and Howson*, Blackburn; *Clifford, Goenell, and Turnay*, for *Garnett and Jackson*, Blackburn.

## QUEEN'S BENCH DIVISION.

*May 6 and 7, 1895.*

(Before Lord RUSSELL, C.J. and CHARLES, J.)

REG. v. TITTERTON. (a)

*Penalties imposed by police magistrate—Appropriation of same by receiver of metropolitan police—Title of local authority—Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76), s. 126—Metropolitan Police Courts Act, 1839 (2 & 3 Vict. c. 71), ss. 7 and 47—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), ss. 12 to 28—Margarine Act, 1887 (50 & 51 Vict. c. 29), ss. 11 & 12.*

*A penalty recovered before a metropolitan police magistrate under sect. 6 of the Margarine Act, 1887, in the case of a prosecution by an "officer, inspector, or constable of the authority who shall have appointed an analyst" within the meaning of sect. 26 of the Sale of Food and Drugs Act, 1875, must be paid to such officer, inspector, or constable, and not to the receiver of the metropolitan police district, in accordance with sect. 47 of the Metropolitan Police Courts Act, 1839.*

*The appropriation of penalties effected by sect. 26 of the Sale of Food and Drugs Act, 1877, is a "proceeding" within the meaning of sect. 12 of the Margarine Act, 1887.*

*Wray v. Ellis (1 E. & E. 276; 28 L. J. 45, M. C.) considered and distinguished.*

**T**HIS was a rule calling upon Harry Titterton, Esq., Chief Clerk at the Worship-street Police-court, to show cause why a *mandamus* should not issue directed to him commanding him to pay over to Charles Quelch, an inspector appointed by the Vestry of St. Leonards, Shoreditch, a penalty of 15*l.* received from one Thomas Morgan, upon an information laid against him by the inspector, before one of the metropolitan police magistrates at Worship-street, under sect. 6 of the Margarine Act, 1877, for selling to the inspector half a pound of margarine by retail in a package which was not duly branded or durably marked as directed by the section in question, and for not delivering to him (the inspector) the margarine in or with a paper wrapper on which was printed the word "margarine" as required by the section.

(a) Reported by T. R. BRIDGWATER, Esq., Barrister-at-Law.



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The question was whether penalties under the Margarine Act, 1887 (50 & 51 Vict. c. 29), recovered before a metropolitan magistrate must be paid to the receiver of the metropolitan police district or to the inspector who prosecutes on behalf of the vestry. For the purposes of the case it was assumed by the Court that Quelch was an "officer, inspector, or constable of the authority who shall have appointed an analyst or agreed to the acting of an analyst within their district" within the meaning of the Sale of Food and Drugs Act, 1875, c. 26. Mr. Titterton had received the fine, and refused to pay it to Quelch on the ground that he was bound to pay it to the receiver for the metropolitan police district under the provisions of the Metropolitan Police Act, 1839 (2 & 3 Vict. c. 71).

The Metropolitan Police Act, 1839 (2 & 3 Vict. c. 71), s. 47, enacts :

Where by any Act or Acts any penalties are or shall hereafter be made recoverable in a summary manner before justices of the peace, and by such Act or Acts the same are or shall be limited and made payable to Her Majesty, or to any person whomsoever save the informer who shall sue for the same, or any party aggrieved, in every such case the same, if recovered or adjudged before any of the said magistrates (of the metropolitan police), shall be recovered for and adjudged to be paid to the said receiver (of the metropolitan police) for the time being, and not to any other person.

The Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 26, enacts :

Every penalty imposed and recovered under this Act shall be paid in the case of a prosecution by any officer, inspector, or constable of the authority who shall have been appointed an analyst . . . to such officer, inspector, or constable, and shall be by him paid to the authority for whom he acts, and be applied towards the expenses of executing this Act, any statute to the contrary notwithstanding ; but in the case of any other prosecution the same shall be paid and applied according to the law regulating the application of penalties for offences punishable in a summary manner.

The Margarine Act, 1887 (50 & 51 Vict. c. 79), ss. 11, 12. Sect. 11 enacts :

Any part of a penalty recovered under this Act may, if the Court shall so direct, be paid to the person who proceeds for the same, to reimburse him for the legal costs of obtaining the analysis, and any other reasonable expenses to which the Court shall consider him entitled.

Sect. 12 enacts :

All proceedings under this Act shall, save as expressly varied by this Act, be the same as prescribed by sections twelve and twenty-eight, inclusive, of the Sale of Food and Drugs Act, 1875.

*H. Sutton* for the receiver of metropolitan police. — The receiver of metropolitan police is fully entitled to this penalty under sect. 47, sub-sect. 1, of the Metropolitan Police Courts Act, 1839, unless that section has been repealed by subsequent legislation. That section has not been overruled by sect. 26 of the Sale of Food and Drugs Act, 1875. This section is a general section, and sect. 47 of the Metropolitan Police Courts Act applies only to a stipendiary magistrate sitting within a metropolitan police district, and therefore the general terms of sect. 26 of the Act of 1875 do not overrule sect. 47 of the Act of

1839. The title of the receiver of metropolitan police to this penalty therefore remains. This view is very strongly supported by the case of *Wray v. Ellis* (1 E. & E. 276). In that case a penalty was recovered summarily before a metropolitan police magistrate under the Act for the Suppression of Gaming Houses (17 & 18 Vict. c. 38). By sect. 8 of that Act it was provided that one half of any penalty recovered under that Act should be paid to the informer, and the other half to the overseer of the parish; and it was held by the Court of Queen's Bench that notwithstanding that provision sect. 47 of the Act was still operative, and that the half of the penalty which was not paid to the informer was payable to the receiver of metropolitan police, and not to the overseer. The case of the *Attorney-General v. Moore* (38 L. T. Rep. 251; 3 Ex. Div. 276) is illustrative of the same principle, although it was decided upon different statutes. Secondly, sect. 12 of the Margarine Act, 1887, does not incorporate sect. 26 of the Sale of Food and Drugs Act, 1875. Sect. 12 of the Act of 1887 incorporates certain sections of the Act of 1875 only so far as they relate to "proceedings," and the application of the penalty recovered is not a "proceeding." The term necessarily imports a step taken or an act done by some person, but the application of the penalty is not dependent upon any such act or step. It is not the magistrate who, under sect. 26 of the Act of 1875, directs to whom the penalty shall be paid; it is the section itself that applies it automatically. No greater weight is to be attached to the fact that sect. 12 of the Act of 1887 refers to sects. 12 to 28 of the earlier Act. The draftsman accidentally omitted to observe that they included sect. 26, which does not refer to procedure at all. But even if the application of a penalty is to be regarded as a "proceeding," still sects. 12 to 28 are only to be incorporated "save as expressly varied by this Act;" and that must refer directly to sect. 11, which is a distinct variation of sect. 26. Sect. 11 provides that "the person who proceeds" for a penalty under that Act is only to have such part of the penalty as the Court directs. Those words, "the person who proceeds," are general words, and apply to official prosecutors as well as to non-official; for the official prosecutor has, under sect. 13 of the Act of 1875, to pay for the analysis just as much as the non-official. But the provision which makes the title of an official prosecutor to the penalty recovered dependent on the discretion of the magistrate is quite inconsistent with a provision which gives him the whole penalty as of right; and sect. 11 cannot be read as confined to penalties recovered by non-official prosecutors, for the same reasoning which, if sound, prevents the reading of sect. 47 of the Act of 1839 into the Act of 1875, must equally prevent the reading of sect. 26 of the Act of 1875 into the Act of 1887. He cited *The Receiver of Metropolitan Police v. Bell* (L. Rep. 7 Q. B. 433; 41 L. J. 153, M. C.)

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*W. Willis*, Q.C. (with him *A. Macmorran*, and *F. Low*) in support of the rule.—[Lord Russell, C.J.—The only point upon which the Court desires your assistance is the distinction between the case of *Wray v. Ellis* (1 E. & E. 276; 28 L. J. 45, M. C.) and this present case.] That case is distinguishable from the present case, as it was a decision upon a different statute, and where the words are different. The prosecutor, who represents the vestry in this case, is burdened by the Sale of Food and Drugs Act, 1875, with the obligation of appointing and paying an analyst, and inspector and other officers to execute the Act; and the object of the first part of sect. 26 was to enable the vestry to recoup themselves for the expenses to which they are thereby put. Having regard to that object, sect. 26 would have to be regarded as impliedly repealing sect. 47, even if the words “any statute to the contrary notwithstanding” were not there, and the presence of these words makes the case for a repeal all the stronger. Secondly, the provisions of sect. 26 are incorporated in the Margarine Act. The application of the penalty is part of the “proceedings.” Sect. 11 is consistent with sect. 26. It was only intended to apply to prosecutions by private persons, the object being to enable the magistrate to reimburse such persons the expenses to which they had been put in obtaining the analysis, which, until then, he had no power to do. But even if the section does apply to official prosecutors there is still no inconsistency, for under one section or the other the official prosecutor will still be entitled to the whole penalty. [He was stopped by the Court.]

Lord Russell, C.J.—The question in this case is whether Mr. Quelch, or the receiver of the metropolitan police, is entitled to a penalty imposed by one of the metropolitan magistrates under the provisions of the Margarine Act, as I think it has been briefly called, the Act of 1887 (50 & 51 Vict. c. 29). We are to assume, upon the admission of the parties for the purpose of this case, that the applicant Mr. Quelch was an officer acting in the execution of the Act of 1875, and properly acting and coming within sect. 26 of that Act. We are not called upon to consider whether that is so or not, but it is admitted between the parties as a datum of the judgment which the Court is called upon to give. The title put forward upon the part of the receiver of the metropolitan police is based, and based solely, upon sect. 47 of the Act of 1839, entitled “An Act for regulating the Police Courts of the Metropolis,” the statute 2 & 3 Vict. c. 71. Sect. 47 of that Act provides that, “where by any Act” (I do not read all the words, but the material ones only) “any penalty is or shall hereafter be recoverable in a summary manner before any justice or justices of the peace, and by such Act the same penalty shall be limited and payable to Her Majesty or to any body corporate, or to any person or persons whomsoever, save the informer who shall sue for the same, or the party aggrieved, then in every such case, if recovered or adjudged before any of the said magistrates

—meaning any of the metropolitan magistrates—such penalty is to be paid to the receiver.” If the legislation in this matter had rested there it would be quite clear that the title of the receiver to the penalty in question would be good. But it does not rest there. The statute is followed after a long interval by the statute with which we have mainly to deal in this case—I mean the statute relating to the sale of food and drugs passed in 1875 (38 & 39 Vict. c. 63), and we have mainly to deal with the sections, beginning with sect. 20 and ending with sect. 28; but in order to understand the scheme of the Act it is necessary to refer a little to the earlier provisions. For the purpose of guarding the public against adulterated articles and deleterious articles there are various provisions creating penalties for the infringement of the provisions directed to that subject. Sect. 10 provides that in the city of London and the liberties, the Commissioners of Sewers of the city and the liberties, and in all other parts of the metropolis the vestries and district boards, acting in execution of the Act, where no appointment has hitherto been made, and in all cases as and when vacancies shall occur, or when required by the Local Government Board, shall appoint certain skilled persons analysts, and shall pay to such analysts remuneration as may be agreed upon. Then the following provisions enable the purchaser (any member of the public) of any article of food to have it analysed, paying certain fees. Then the proceedings against offenders are regulated by the sections beginning with sect. 20. When the analyst, having analysed the article, shall have given his certificate of the result, then the person causing the analysis to be made may take proceedings for the recovery of the penalty herein imposed for such offence before any justices in petty sessions assembled having jurisdiction in the place where the article or drug sold was actually delivered to the purchaser; and having considered the matter, and having arrived at the conclusion that it is a case for the imposition of a penalty, then follows sect. 26, dealing with how a penalty is to be applied: “Every penalty imposed and recovered under this Act shall be paid in the case of a prosecution by any officer, inspector, or constable of the authority who shall have appointed an analyst, or agreed to the acting of an analyst within their district, to such officer, inspector, or constable” (and it is, as I have said, to be assumed that Mr. Quelch is within that category), “and shall be by him paid to the authority for whom he acts, and be applied towards the expenses of executing this Act, any statute to the contrary notwithstanding.” So far, therefore, that section, in clear and unambiguous language, provides, in the case of what have been called during the argument official prosecutions, that the penalty recovered shall be paid to the authority whom the prosecutor represents. If one is to look to the reason of the thing, there seems to be excellent reason why it should be so. A new obligation is cast upon the local authority. They are to aid in the execution of this Act, and the Act requires them to take

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upon themselves the burden and responsibility of appointing and of paying the analyst. The provision to which I have so far directed attention provides a means by which that local authority may be put, at least in part, in funds for the purpose of seeing to the effective execution of this important Act of Parliament. Stopping there for one moment, and looking to the reason of the thing, it is exceedingly difficult to suppose that the Legislature, while it intended that that provision should have effect for the benefit of the local authorities throughout the whole of the rest of the kingdom, should not have that effect and that advantage in the case of the local authorities in this great and crowded metropolis, where undoubtedly the execution of the Act would be more urgently called for than in any other community. But the Act does not stop there. So far it deals with what I have called official prosecutions, but in the case of any other prosecution, and also in the case of a prosecution not official but instituted by any one of the public who, as I have pointed out, may institute such proceedings, then the penalty is to go according to the existing law; and according to that existing law, which it is not necessary to refer to at any length, in the case of the imposition of penalties by the metropolitan magistrates they go to the receiver of the police. In the case of boroughs having quarter sessions they go to the treasurer of those boroughs according to the general existing law. That is the state of the legislation upon the matter up to the time of the passing of the Margarine Act, the Act entitled "for the better Prevention of the Fraudulent Sale of Margarine" (50 & 51 Vict. c. 29) and passed in 1887. It is entirely connected with the offence of fraudulently selling margarine. It has, therefore, a limited application, but it is supplemental to the Act of 1875, dealing with the sale of food and drugs, and it provides in sect. 11 that "any part of any penalty recovered under this Act may, if the Court shall so direct, be paid to the person who proceeds for the same to reimburse him for the legal costs of obtaining the analysis and any other reasonable expenses to which the Court shall consider him entitled." The object of that supplemental provision of the law is clear enough. Under sect. 26, which I have read from the Act of 1875, in the case of official prosecutions they evidently went to the authority whom the official prosecutor represented, but in the case of non-official prosecutions they went according to the general law. Therefore there did not appear to have been (I must assume it is so) any power in the case of a non-official prosecution for the magistrates to do more than award costs against the persons upon whom the penalty was imposed, and apparently no power, which would be a reasonable one in such a case and in executing such a statute, for the Court to reimburse the non-official prosecutor for any expense to which he might have been put. Therefore, quite fitting in with the statute of 1875, is the provision in the statute of 1887 providing that a part of the penalty recovered under that Act relating to what I may call the



margarine offences may be paid to the person who proceeds in order to reimburse him for the legal costs. I do not think that there is much in the second point raised by Mr. Sutton, that in point of fact appropriation of penalties is not a proceeding within the meaning of sect. 12; in other words, that sect. 12 of the Margarine Act does not incorporate sect. 26 of the Act of 1875. I think it very clearly does. It enumerates the sections by numbers—from 12 to 28 inclusive—and even if there were not that enumeration expressly of those numbers which include sect. 26, I should have thought it was not straining the language of the Act of Parliament at all to say that the appropriation of the penalty which the magistrate is called upon to make after his adjudication that the penalty shall be paid by the party charged—I do not think it would be any straining of the language at all to say that that is a part of the proceeding within the meaning of the Act. But the main question which Mr. Sutton has argued is, that the statute of 2 & 3 Vict. c. 21, s. 7, is still good and operative law. That is the main question. Certain cases have been cited, and two principal cases have been cited by the learned counsel who appears in support of the claim of the receiver of the metropolitan police. I will only say, to begin with, about those cases that I conceive the observation pointed out to me by my learned brother in the judgment of Campbell, C.J. is most apposite to the consideration of the true construction to be placed upon Acts of Parliament. He says in that case, on page 288 of the report in *Wray and Ellis (ubi sup.)*: “There can be little use in referring to cases where a similar question has arisen on Acts of Parliament differently framed, for they only illustrate the general principle, which is not in dispute.” I think that observation is most apposite. What then is the duty of the Court which is called upon to construe an Act of Parliament? I conceive the first duty of the Court to be to read the Act of Parliament, to consider the entire provisions of the Act of Parliament itself, and, if its language be clear and unambiguous, to give effect to what the Legislature has said. I think it is proper to refer to the history of legislation, to Acts *in pari materiâ* with that which is under construction only when there is ambiguity, and when there is doubt in the language which the Legislature has chosen to use. In this case I confess that I can see no manner of doubt whatever. I think the scheme of the Act is intelligible, coherent, and entirely free from ambiguity; and, if one has to look beyond the language itself and seek for justification in and principle for what the Legislature has chosen to do, I think the explanation is in every way complete and satisfactory. The case decided by the Court of Queen’s Bench, the case of *Wray v. Ellis (ubi sup.)*, was undoubtedly decided by a very strong Court, and, as it was a case in which there was an appeal, this Court would be bound to act upon it if it applied, even if this Court did not agree in the decision arrived at; and indeed, whether they considered themselves bound or not by it, they

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would pay it the greatest possible respect because of the distinguished judges from whom the judgment emanated. But while I do not hesitate to say, speaking for myself only, that I should have found the greatest possible difficulty in arriving at the conclusion at which that Court arrived, and I should not have arrived at it, I think yet it is distinguishable from the present case upon several grounds. Some of these grounds have been already adverted to. The language is not to be found in that case and the section of the Act of Parliament, which is to be found here, "any statute to the contrary notwithstanding"; but for my own part I confess I lay much less stress upon the presence in this case of those words and their absence in the previous case than I do upon the elaborate and careful provisions which are provided in the section of the Act of Parliament, and which make it clear to my mind that the Legislature did intend unmistakably to do what they have done, namely, to give in the case of official prosecutions the penalty to the authority the official prosecutor represented. In all other cases of non-official prosecutions they have to allow the penalty to go as the law sends it; that is to say, in the case of non-official prosecutions within the metropolitan district before the metropolitan police magistrate to the receiver, in boroughs where there are sessions to the treasurer of the borough. I do not think it necessary to refer to the case of the *Attorney-General v. Moore* (*ubi sup.*) beyond saying that the observations that I have made in distinguishing the case of *Wray v. Ellis* (*ubi sup.*), and this case apply equally to that case. Speaking for myself, I come to a conclusion perfectly clear and satisfactory to my own mind that in this case the receiver of police is not entitled to the penalty in question.

CHARLES, J.—I am of the same opinion. The first question which has to be considered in the case is, whether sect. 26 of the Food and Drugs Act, 1875, is incorporated in the Margarine Act of 1887, and Mr. Sutton invites us to say that it is not, upon two grounds as I understand him. In the first place, he says that the 12th section of the Margarine Act of 1887 refers to proceedings only, and that a section in the prior Act which governs the mode of appropriating a penalty is a proceeding. Then, secondly, he says that sect. 11 of the Margarine Act must be read along with sect. 12, and that by sect. 11 there is an enactment with reference to a part of the penalty recovered which renders it impossible to suppose that it was intended to incorporate the 26th section of the earlier statute. I am unable to assent to either of these contentions. I think that the word "proceeding" in sect. 12 does include a section which prescribed the application of the penalty, the more so as by number at all events the section in question is itself alluded to in the 12th section of the Margarine Act of 1887. Secondly, I see no inconsistency between holding that "proceeding" includes the mode in which the penalty is to be applied. Sect. 11 of the Act of 1887 provides that in a certain case, if the Court think fit, a part of the penalty received may be paid to

the person who proceeds for the same. That appears to me to be quite consistent with the enactment contained in sect. 26 as to the general application of penalties where a prosecution is instituted that can be called an official prosecution, or where a prosecution is instituted which may be described as a non-official prosecution. I think, therefore, that sect. 26 of the Act of 1875 is incorporated with the subsequent statute, and accordingly it becomes necessary to consider the second question—the main question which Mr. Sutton has argued. What is the construction of it, having regard to the language of 2 & 3 Vict. c. 71, sect. 47, upon which the title of the receiver in this case is based? I entirely concur with what my Lord has said as to the reason of this matter, and as to the propriety of the Legislature having enacted that in the case of an official prosecution the penalty shall be paid to the authority which acts, and it seems to me that, reading this section by itself, and not for the moment laying any stress at all upon the words contained in “any statute to the contrary notwithstanding”—reading this section by itself, it is a plain enactment by the Legislature that official prosecutors shall have the penalty paid to them. In the 26th section there is a dealing by the Legislature with prosecutions which may be described as non-official prosecutions, and looking at the section by itself, as I have said, and my Lord has pointed out and given his reasons for so holding, it seems to me to be admirably adapted to effect the intention which the Legislature may be supposed to have had to recoup to an official person the expenses of a prosecution. But then it is said that it is necessary to read in those sections 12 to 28 of the Police Act and the 47th section of the 2 & 3 Vict. c. 71, and, as I understand the argument, it is put in this way: that that section applies to a limited area, namely, the area of the county of Middlesex within the jurisdiction of the metropolitan police magistrates; and in that area it is specially provided by this section that penalties and forfeitures recovered before metropolitan magistrates shall go to the receiver. It is said that this statute, never having been repealed, must be read with the later statutes, and furnishes an illustration of the maxim, *Generalia specialibus non derogant*, as Lord Campbell said in the case to which reference has been made. The principle which governs the matters is beyond dispute. The later statute must be carefully looked at, to see whether or not, when its purview is looked at, and when its terms are considered, it does in fact, as to the matters contained in the later statutes, by implication repeal the earlier enactment. I should have no hesitation whatever in this case in holding that, for the reasons which my Lord has given, sect. 26 is complete in itself, and extends to the whole of England, including the metropolitan police district, were it not for the case of *Wray v. Ellis* (*ubi sup.*), which, for a time, certainly did present great difficulty to my mind. It is a case, as pointed out, decided by a full Court of Queen’s Bench, and a case which might have been appealed from, and it was not. In

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*Adulteration  
of food—  
Penalties in  
metropolis—  
Appropriation  
by receiver of  
metropolitan  
police—Right  
of local autho-  
rity to penal-  
ties—2 & 3  
Vict. c. 71,  
ss. 7, 47; 1  
38 & 39 Vict.  
c. 63, s. 26;  
50 & 51 Vict.  
c. 29, ss. 11,  
12.*

that case it was decided that, although the Gaming Act—the Act for the Suppression of Gaming Houses—expressly provides that “One-half of any pecuniary penalty which shall be adjudged to be paid under this Act shall be paid to the person laying the information upon which the conviction takes place, and the remaining half shall be applied in aid of the poor rates of the parish in which the offence shall have been committed, and shall be paid for that purpose to the overseer or other person authorised to receive poor rates in such parish, on a summary conviction under this Act, before a metropolitan police magistrate, it was held that the half of the penalty which was not paid to the informer was paid to the receiver of the metropolitan police and not to the overseer.” I own I feel great difficulty in following the reason which appeared to have governed the Court of Queen’s Bench in coming to the decision to which they did come; but there the decision stands, and if this were a case raised under 17 & 18 Vict. c. 38, we should undoubtedly be bound to follow that decision. But it is not, and it appears to me that there are material distinctions between the case of *Wray v. Ellis* (*ubi sup.*) and the case which we now have under our consideration. In *Wray v. Ellis* the Court was of opinion—although obviously when you read the whole judgment of the Lord Chief Justice even in that case with greatest doubt, more especially that which appears in the early part of Lord Campbell’s judgment—the Court was of opinion that they could best effect the intention of the Legislature by leaving the two statutes standing together, and allowing the receiver of police to receive the penalty where a prosecution was instituted under the Gaming Act. That is the whole extent of the decision of the Court, and I cannot agree with the statement of the decision which I have before me in the well-known work of Chitty’s Statutes, that it is an authoritative proposition that this section is not repealed so far as regards the application of penalties. I agree so far as regards the application of penalties under the Gaming Act, that the section is not repealed; but otherwise it seems to me that in such cases it still remains a subject of inquiry by the Court before which the question comes whether the subsequent statute does by its provisions, either expressly or impliedly, repeal the terms of the 47th section. In this case I think it is clear, when this section is looked at, that it does. It may be said with some little force that some weight ought to be placed upon the words “any statute to the contrary notwithstanding.” Certainly the existence of those words points in the direction in which I own I should have decided the case myself, and I understand my Lord to say he would have done so too if those words had not been there. The other decision which was referred to by Mr. Sutton of the *Attorney-General v. Moore* (*ubi sup.*) is really a long way from the present case. There the Municipal Corporations Act itself does provide, in the plainest terms, as the Lord Chief Baron points out in his judgment in the Court below, that, although a subsequent statute may give a

penalty to any informer or to Her Majesty, yet where a borough has a separate court of quarter sessions it is nevertheless to be paid to the treasurer. It seems to me that, although the language of the Municipal Corporations Act is very like the language of sect. 47, the same observation applies to it which I have made already with regard to the other case, that really these cases must be judged of as they arise, and must be decided exclusively upon the language which in each case the Court is called upon to consider. I think, therefore, in this case that the *mandamus* was right.

*Rule absolute for mandamus.*

Solicitor in support of the rule obtained, *H. Mansfield Robinson.*

Showing cause against the rule, *The Solicitor for the Treasury.*

REG.  
v.  
TITTERTON.  
—  
1895.

*Adulteration of food—Penalties in metropolie—Appropriation by receiver of metropolitan police—Right of local authority to penalties—2 & 3 Vict. c. 71, ss. 7, 47; 38 & 39 Vict. c. 63, s. 26; 50 & 51 Vict. c. 29, ss. 11, 12.*

## CROWN CASES RESERVED.

*Saturday, July 27, 1895.*

(Before Lord RUSSELL, C.J., POLLOCK, B., GRANTHAM, LAWRENCE, and WRIGHT, JJ.)

REG. v. FARNBOROUGH. (a)

*Practice—Inferences from findings of jury—Power of judge to draw inferences—Larceny—Animus furandi.*

*In a criminal trial the judge has no power to draw inferences of fact from the findings of the jury.*

*Upon the trial of an indictment for larceny the jury, not having agreed upon a verdict, were asked by the presiding judge whether or not they believed the evidence given for the prosecution, and the judge upon being answered in the affirmative, directed a verdict of guilty to be entered. A case having been reserved at the trial for the consideration of this Court:*

*Held, that the direction amounted to a drawing by the judge of an inference of animus furandi on the part of the prisoner which ought to have been drawn, if at all, by the jury; and that the conviction was therefore bad.*

**T**HIS was a case stated by the Chairman of the Middlesex Quarter Sessions, as follows:—

(a) Reported by R. CUNNINGHAM GLEN, Esq., Barrister-at-Law.

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v.  
FARNBOROUGH.

1895.

Practice—  
Findings of  
jury—Judge's  
power to draw  
inferences  
from findings  
—Larceny—  
Animus,  
furandi.

At the Midsummer Quarter Sessions of the Peace for the county of Middlesex, on the 6th day of July, 1895, the prisoner was charged with stealing milk.

The facts of the charge are immaterial to this case.

It appeared to me that, if the jury believed the evidence for the prosecution, the prisoner was in law guilty as charged, and I so directed them. No evidence except as to character was called for the defence, and the counsel for the defence did not seriously dispute my ruling.

The jury retired to consider their verdict, and after they had been absent some time I sent for them and asked if they were agreed, and they replied that they were not. I then asked them did they believe the evidence for the prosecution, and the foreman replied that they did.

Counsel for the prisoner objected that no question could be asked except the ordinary one, "Are you agreed on your verdict?" and "Do you find the prisoner guilty or not guilty?" I overruled the objection, and directed the jury that their verdict amounted to one of guilty, and it was so recorded; but I released the prisoner on his own recognisance, pending the decision of this case.

It is laid down in 4 Bl. Comm. ed. 1813, p. 328:

Such public or open verdict may be either general guilty or not guilty, or special, setting forth all the circumstances of the case, and praying the judgment of the court, whether, for instance, on the facts stated it be murder, manslaughter, or no crime at all. This is, when they doubt the matter of law, and therefore choose to leave it to the determination of the court, though they have an unquestionable right of determining upon all the circumstances, and finding a general verdict if they think proper so to hazard a breach of their oaths.

The question is, Had I the power to put the question and direct such verdict to be recorded, the facts in the judgment of the Court clearly constituting in law the offence charged if proved to the satisfaction of the jury?

*Hutton*, on behalf of the prisoner, submitted that, in doing what he had done, the learned chairman had usurped the functions of the jury, and drawn the inference from the findings of the jury that the act of the prisoner in taking the milk, the value of which at the most was 2d., had been committed with a felonious intent. [He was here stopped by the Court.]

*J. P. Grain* admitted, on behalf of the prosecution, that the conviction could not under the circumstances be supported.

LORD RUSSELL, C.J.—If this case did not raise a question of very considerable public importance, I should content myself with saying that the conviction could not stand. But it does raise a question of great public importance. The prisoner being charged with stealing milk, evidence was given in support of that charge; and, after the evidence had been given for the prosecution, no evidence, except as to character, being called for the defence, the jury retired to consider their verdict. After the lapse of some time, without any communication being made by

them to the learned chairman that they desired his assistance, he sent to them, as he might properly do, and asked them if they had agreed upon their verdict, when they said "No." He then asked them, "Did they believe the evidence for the prosecution," and the foreman replied that they did. I will not stop to consider whether that was a convenient mode of conducting a criminal prosecution. But what did the answer of the foreman, assuming that it expressed the opinion of the jury, amount to? They had already said that they were not agreed upon their verdict; it seems to me that it all amounted to this, "We have heard certain witnesses say so and so, and we believe that they have been telling the truth." But that was consistent with a finding by them that they were nevertheless not satisfied that the essential elements were present which were necessary to constitute the offence with which the prisoner was charged, namely, that he took the milk *animo furandi*. It was quite consistent with their believing that he thought he had leave to take the milk, or that the matter was too trivial to justify such a finding. We know 'nothing of the facts, but it was quite consistent with the jury declining, although they believed the evidence, to draw the conclusion which was necessary for convicting the prisoner. It is for the jury to answer all questions of fact, and for the judge to answer questions of law. Here the learned chairman took upon himself the functions of the jury, and the conviction cannot, in my opinion, be sustained.

POLLOCK, B.—I entirely agree, and wish to say nothing but that this decision of ours is not to be taken in any way to interfere with the rule as to the power of the judge where the jury find a special verdict. If a special verdict is found in which all the elements of the crime charged against the prisoner are included, there is nothing to prevent the judge from directing whether or not a verdict of guilty is to be entered. This will be found discussed in *Reg. v. Gray* (2 East P. C. 708; 17 Cox C. C. 299).

GRANTHAM, LAWRENCE, and WRIGHT, JJ. concurred.

*Conviction quashed.*

Solicitors: for the prosecution, *C. H. Mason*; for the prisoner, *H. Firth*.

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v.  
FARNBOROUGH.  
—  
1895.  
—  
Practice—  
Findings of  
jury—Judge's  
power to draw  
inferences  
from findings  
—Larceny—  
Animus  
furandi.



## CROWN CASES RESERVED.

*Saturday, July 27, 1895.*

(Before Lord RUSSELL, C.J., POLLOCK, B., GRANTHAM, LAWRENCE,  
and WRIGHT, JJ.)

REG. v. WAUDBY. (a)

*Practice—Joint indictment for felony of cutting and wounding, and for aiding and abetting a felony—Conviction of one for misdemeanour of wounding, and of the other for aiding and abetting—14 & 15 Vict. c. 19, s. 5; 24 & 25 Vict. c. 94, s. 8.*

*Upon a joint indictment charging one prisoner with the felony of wounding with intent to do grievous bodily harm, and the other with aiding and abetting him in committing such felony, it is competent for the jury to find the one charged with aiding and abetting guilty, although they may have acquitted the other of the felony, and found him guilty only of the misdemeanour of wounding by virtue of 14 & 15 Vict. c. 19, s. 5.*

THIS was a case stated for the opinion of the Court by Lawrance, J. as follows:—

John Waudby and William Waudby were tried before me on the 17th day of May last, at the assizes held at Leeds, upon an indictment charging John Waudby with feloniously, &c., shooting with intent to do grievous bodily harm to one William Featherstone, and William Waudby was charged with aiding and abetting John Waudby to commit the said felony.

In the second count of the indictment the charge against John Waudby was for feloniously wounding with intent to do grievous bodily harm, and against William Waudby for being present aiding, abetting, &c., the said John Waudby to commit the said felony.

The jury found John Waudby guilty of unlawfully wounding, and William Waudby guilty of aiding and abetting, and it was objected on behalf of the prisoner William Waudby that, as he was aiding and abetting a misdemeanour, he was entitled to be acquitted on the said indictment.

I overruled the objection, and released the said William Waudby on recognisances to come up for judgment when called upon.

(a) Reported by R. CUNNINGHAM GLEN, Esq. Barrister-at-Law.

The question for the consideration of the Court is, whether I was right in so holding.

The following is a copy of the indictment which accompanied the case :

Yorkshire to wit. North and East Ridings Division Spring Assize.—The jurors for our Lady the Queen upon their oath present, that John Waudby the younger, on the seventeenth day of April in the year of our Lord one thousand eight hundred and ninety-five, a certain revolver then loaded with ball cartridge, at and against one William Featherstone, feloniously, unlawfully, and maliciously did shoot with intent in so doing thereby then to do some grievous bodily harm to the said William Featherstone, and the jurors aforesaid upon their oath aforesaid do further present that William Waudby, on the day and in the year aforesaid, feloniously was present aiding, abetting, and assisting the said John Waudby the younger the felony aforesaid to do and commit, against the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her Crown and dignity.

Second count.—And the jurors aforesaid upon their oath aforesaid do further present, that the said John Waudby the younger, on the day and in the year aforesaid, feloniously, unlawfully, and maliciously did wound the said William Featherstone with intent in so doing thereby then to do some grievous bodily harm to the said William Featherstone, and the jurors aforesaid upon their oath aforesaid do further present, that the said William Waudby, on the day and in the year aforesaid, feloniously was present aiding, abetting, and assisting the said John Waudby the younger the felony aforesaid to do and commit, against the form of the statute in such case made and provided, and against the peace of our Lady the Queen, her Crown and dignity.

No one appeared either in support of or against the conviction.

Lord RUSSELL, C.J.—In this case the prisoners John and William Waudby were tried before my brother Lawrance upon an indictment which charged, in the first count, John Waudby with feloniously shooting at the prosecutor with intent to do him grievous bodily harm, and William Waudby with aiding and abetting him in the felony. In the same count John Waudby was charged with feloniously wounding the prosecutor, with intent to do him grievous bodily harm, and William Waudby was charged with aiding and abetting him as before. The jury acquitted both the prisoners on the first count. But on the second count they found John Waudby guilty not of felony, but of the misdemeanour of unlawfully wounding, and William Waudby guilty of aiding and abetting him in that unlawful wounding. It was objected that William Waudby could not be convicted as an accessory, the jury having negatived the charge of felony, and found John Waudby guilty of the misdemeanour only. The learned judge, however, overruled this objection; and in my judgment he was clearly right in so doing. In the first charge, which was of felony, both the prisoners were charged as principals, William Waudby being charged as a principal in the second degree as having aided and abetted. The jury negatived the charge of felony, but found John Waudby guilty of unlawful wounding, which offence is a misdemeanour, and William Waudby, who was charged with aiding and abetting, was found guilty of aiding and abetting in the commission of that misdemeanour. Now a person who aids and abets in the case of

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*Practice—  
Joint indictment for  
felony—Conviction of one  
for misdemeanour only  
—Conviction of other for  
aiding and abetting  
felony—  
14 & 15 Vict.  
c. 19, s. 5:  
24 & 25 Vict.  
c. 94, s. 8.*

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*Practice—  
Joint indictment for  
felony—Conviction of one  
for misdemeanour only  
—Conviction of other for  
aiding and abetting  
felony—  
14 & 15 Vict.  
c. 19, s. 5;  
24 & 25 Vict.  
c. 94, s. 8.*

misdemeanour is liable as a principle in the commission of that offence, there being no first and second degrees of criminality in the case of a misdemeanour. The statute 14 & 15 Vict. c. 19, s. 5, is clear on the point, for it provides that, "if upon the trial of any indictment for any felony except murder or manslaughter, where the indictment shall allege that the defendant did cut, stab, or wound any person, the jury shall be satisfied that the defendant is guilty of the cutting, stabbing, or wounding charged in such indictment, but are not satisfied that the defendant is guilty of the felony charged in such indictment, then and in every such case the jury may acquit the defendant of such felony, and find him guilty of unlawfully cutting, stabbing, or wounding, and thereupon the defendant shall be liable to be punished in the same manner as if he had been convicted upon an indictment for the misdemeanour of cutting, stabbing, or wounding." That is to say, that where the act has not been done with the intent necessary to constitute the felony, then the prisoner shall be punished in the same manner as if he had been charged with the misdemeanour only. Then follows the statute 24 & 25 Vict. c. 94, s. 8, which enacts that: "Whosoever shall aid, abet, counsel, or procure the commission of any misdemeanour, whether the same be a misdemeanour at common law, or by any Act passed or to be passed, shall be liable to be tried, indicted, and punished as a principal offender." Here the jury negatived the felony, but found that which constitutes an offence as a principal offender, there being no secondary degree in the commission of the offence. The conviction appears to me, therefore, to be right, and must be affirmed.

POLLOCK, B., GRANTHAM, LAWRENCE, and WRIGHT, JJ., concurred.

*Conviction affirmed.*

## QUEEN'S BENCH DIVISION.

*Friday, Oct. 25, 1895.*

(Before Lord RUSSELL, C.J. and CAVE, J.)

MOORE (app.) v. PEARCE'S DINING AND REFRESHMENT ROOMS  
LIMITED. (resps.) (a)

*Margarine—Using in refreshment-house — Exposed for sale—  
Margarine Act, 1887 (50 & 51 Vict. c. 29), s. 6.*

*The sale of margarine in a refreshment-house as a condiment  
with other food to be consumed on the premises is not a sale by*

(a) Reported by J. A. STRAHAN, Esq., Barrister-at-Law.

*retail within sect. 6 of the Margarine Act, 1887 (50 & 51 Vict. c. 29).*

*Respondents were proprietors of a refreshment-house, where bread with margarine spread upon it and haddock with a piece of margarine as a condiment to it, were sold to be consumed on the premises. No margarine was sold to be taken away. The large piece of margarine from which that used in the shop was taken was exposed to the view of customers, and so were the buttered slices of bread. On neither was there any label within sect. 6 of the Margarine Act. The appellant summoned the respondents for exposing margarine for sale by retail without a label contrary to the provisions of sect. 6. The magistrate dismissed the summons.*

*Held, that the dismissal was right.*

**S**PECIAL case stated by a metropolitan magistrate under the provisions of the Summary Jurisdiction Acts.

The following passage from the judgment of Lord Russell, C.J. sufficiently sets forth the material facts in the case :

“The respondents in this case keep a refreshment-house. It is strictly a refreshment-house. Nothing is sold to be taken away. The customer calls for what he wants, and eats what he calls for before leaving the premises. Notices are posted about the shop to the effect that nothing is used in the establishment but a mixture of pure Danish butter and margarine. What are called ‘slices’—that is slices of bread with butter spread over them—are sold at the price of one halfpenny each. Haddock is also sold, and with it is given, if desired, a piece of butter; but, whether the butter is taken or not, the price is the same. The large piece from which the butter used in this way is taken is kept on a shelf behind the counter, but in full view of everyone entering the shop. Numbers of slices from which customers are supplied are kept on the counter uncovered. On neither the butter nor the slices is there a notice such as would satisfy sect. 6 of the Margarine Act. It is admitted that all the butter used is margarine within the definition of that term in sect. 3.

“On the 22nd day of January the appellant Moore went into the respondent’s shop, and after being served with tea and coffee and dry bread asked for threepence worth of the margarine from which that used in the shop was taken. Thereupon the respondent’s manager promptly refused to serve him, and informed him that the butter was not sold to be taken away, but only to be used with bread and haddock to be consumed on the premises.”

The appellant summoned the respondents for that they, being dealers by retail in margarine, did expose for sale margarine without a label as required by sect. 6 of the Margarine Act, 1887 (50 & 51 Vict. c. 29).

Sect. 6. Every person dealing in margarine in the manner described in the preceding section shall conform to the following regulations :

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DINING AND  
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Sale of food—  
Margarine  
Act, 1887—  
Exposure for  
sale—Use of  
margarine in  
refreshment  
house—  
50 & 51 Vict.  
c. 29, s. 6.

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REFRESHMENT  
ROOMS  
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—  
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—

Every package, whether open or closed, and containing margarine, shall be branded or durably marked "margarine" on the top, bottom, and sides, in printed capital letters, not less than three-quarters of an inch square: and if such margarine be exposed for sale by retail, there shall be attached to each parcel thereof so exposed, and in such manner as to be clearly visible to the purchaser, a label marked in printed capital letters not less than one and a half inches square, "margarine;" and every person selling margarine by retail save in a package duly branded or durably marked as aforesaid, shall in every case deliver the same to the purchaser in or with a paper wrapper, on which shall be printed in capital letters, not less than a quarter of an inch square, "margarine."

Sale of food—  
Margarine  
Act, 1887—  
Exposure for  
sale—Use of  
margarine in  
refreshment  
house—  
50 & 51 Vict  
c. 29, s. 6.

The magistrate dismissed the summons.

The prosecutor appealed.

*Morton Smith* (*Dickens*, Q.C. with him) for the appellant.—

The question here is, whether the Act applies to the case of margarine exposed for sale for consumption on the premises. [Lord RUSSELL, C.J.—The question rather is, whether the Act applies to the case of margarine exposed for sale as a condiment with other food to be consumed on the premises.] My contention is, that the words "sale by retail" include every kind of sale—that is, they apply in every case where the margarine is not given away. [CAVE, J.—Then, if I ordered butter sauce in an eating-house and it was made of margarine, you think that the waiter, in order to keep clear of crime, should serve it to me either in a stamped package or in a stamped paper wrapper?] No, I contend there are three kinds of sale contemplated by the Act: sale by package where the amount sold is considerable; sale with paper wrapper where the margarine is sold to be taken away; and sale for consumption on the premises, whether in the form of pats or as a condiment to food. In all cases where the piece from which that sold is taken is exposed to the customer's view it should be marked according to the Act. Here the margarine was exposed: (*Orane v. Lawrence*, 63 L. T. Rep. 473; 25 Q. B. Div. 152.) It was for sale by retail, inasmuch as it was not given away for nothing.

*John Ogle*, for the respondents, was not called on.

Lord RUSSELL, C.J.—Undoubtedly the question raised in this case is one of much importance. The object of the Act was to protect the public from being imposed upon as to the article which they were buying. Now here, whether an offence has been committed or not, there is no ground for imputing any intention to impose on customers. The trading was plainly open and above board. Nevertheless the respondents may have contravened the provisions of the statute. To understand those provisions it is necessary to look at the preamble, and also at sects. 4 and 6 as the learned counsel has done; but the question we have to decide is, whether the respondents have committed an offence within the middle part of sect. 6. Before deciding this we must look at the final part of that section, because, in our opinion, it shows the kind of sale by retail for which exposure is contemplated in the middle part of the section. "Every person" the final part runs, "selling margarine by retail save in a package" which is not in question here, "shall

in every case deliver the same to the purchaser, in or with a paper wrapper on which shall be printed in capital letters, not less than a quarter of an inch square, 'margarine.'” These words cannot be taken to apply to all manner of sales. They cannot be taken to apply to sales such as proved here. Examples given by my learned brother and by me during the argument show what absurdities would arise from attempting to apply the machinery of this section to the business carried on in this refreshment-room. The absurdity is so plain that counsel himself abandoned the contention that the buttered bread or the haddock and butter should be handed to the customer in a paper wrapper, and confined himself to arguing that the large piece of butter from which that used was taken should have a label on it as being exposed for sale by retail. But the latter part of the section must be looked to to see the kind of sale by retail contemplated by the Act, and only two kinds are there referred to—sale in a package and sale in a paper wrapper. That being the case there was no exposure for sale by retail at all within the meaning of the section. The mere selling in the one case of pieces of bread with margarine smeared upon them, and in the other of haddocks with pieces of butter added as was done in this case, does not bring the respondents within the Act.

CAVE, J.—I am of the same opinion for the same reasons.

*Appeal dismissed.*

Solicitor for the appellant, *C. Urquhart Fisher.*

Solicitor for the respondents, *Thomas Charles.*

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*Sale of food—  
Margarine  
Act, 1887—  
Exposure for  
sale—Use of  
margarine in  
refreshment  
house—  
50 & 51 Vict.  
c. 29, s. 6.*

## QUEEN'S BENCH DIVISION.

*Friday, Oct. 25, 1895.*

(Before Lord RUSSELL, C.J. and CAVE, J.)

BISCHOP (app). v. TOLER (resp.) (a)

*Trade description—Place where goods were made—Merchandise  
Marks Act, 1887 (50 & 51 Vict. c. 28), ss. 2 and 3.*

*The place or country in which any goods were made or produced is  
not the place or country in which the greater part of the material*

(a) Reported by J. A. STRAHAN, Esq., Barrister-at-Law.



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Merchandise  
Marks Act,  
1887—Trade  
description—  
Place where  
goods made—  
50 & 51 Vict.  
c. 28, ss. 2, 3.

*of which they consist was manufactured, but that in which the process which made them a finished product was gone through. B. had in his possession for sale certain goods to which was applied the trade description "Le Dansk, French Factory." Ninety per cent. of the material of which they were composed was produced in France; ten per cent. was afterwards added in England. Until the latter was added the goods were known in the trade as oleomargarine, afterwards as "Le Dansk."*

*Held, that the country where the goods were made or produced was England, and that the description "Le Dansk, French Factory" was a false trade description within sect. 3, 1 (b) of the Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), as amounting to a representation that they were made in France.*

**S**PECIAL case stated by a metropolitan magistrate.

The appellant, Samuel Bishop, was employed as manager, and had sole charge of a shop, No. 59, Oxford-street, the owner of which—one Auguste Pellerin—did not reside in England. The shop was for the sale of a certain kind of margarine known in the trade by the name of "Le Dansk." The stock of Le Dansk kept in the shop was not exposed to the view of customers, but was stored in a cupboard which was opened only to take out boxes containing the substance. There were, it appeared, no notices in the shop to the effect that Le Dansk was margarine, save one in the cupboard where the stock was kept. About the shop, however, were many empty cardboard boxes, on which were stamped, in large letters, the words "Le Dansk, French Factory"; and on the counter were empty tin boxes, on which were stamped the words "Le Dansk, Paris"; and on the window of the shop, and at the top of the front of the house, were large display notices with the words "Le Dansk."

The evidence went to show that "Le Dansk" ("le" French for "the" and "Dansk" Danish for "Danish") was a fancy name which Pellerin had registered as a trade mark before the passing of the Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28). It was known in the trade as referring to a superior kind of margarine, in the preparation of which Danish butter was used. It appeared that in the present case the substance was composed of oleomargarine to the extent of 90 per cent., and of English milk and Danish butter to the extent of 10 per cent. The oleomargarine was manufactured at a factory in Paris called the "Le Dansk Factory," while the English milk and Danish butter were added at a factory at Southampton called the "French Factory." On the 21st day of January, 1895, the respondent Toler bought in the shop managed by the appellant two pounds of "Le Dansk." The substance was supplied to him by the wife of the appellant in cardboard boxes similar to those about the shop, save that beside the words "Le Dansk" there were stamped upon them in letters a quarter of an inch square the word

"Margarine." It would seem that the tin boxes marked "Le Dansk, Paris," were not used for the sale of margarine by the appellant.

The respondent summoned the appellant for having in his possession for sale certain goods, to wit, margarine, to which was applied a false trade description, contrary to sects. 2 and 3 of the Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28).

Sect. 2.—(2.) Every person who sells, or exposes for, or has in his possession for sale, or any purpose of trade or manufacture, any goods or things to which any . . . false trade description is applied . . . shall . . . be guilty of an offence against this Act.

Sect. 3.—(1.) For the purposes of this Act . . . The expression "trade description" means any description, statement, or other indication, direct or indirect . . . (b.) as to the place or country in which any goods were made or produced, or . . . (d.) as to the material of which any goods are composed. . . . The expression "false trade description" means a trade description which is false in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description; whether by way of addition, effacement, or otherwise, where that alteration makes the description false in a material respect, and the fact that a trade description is a trade mark, or part of a trade mark, shall not prevent such trade description being a false trade description within the meaning of this Act.

The magistrate convicted the appellant, holding that there had been a false trade description of the goods sold to the respondent within both sub-sect. 1 (b), and sub-sect. 1 (d) of sect. 3. Bishop appealed.

*Bonsey* (with him *George Elliot* and *Fitch*) for the appellant.—As to sub-sect. (d), contended that the name "Le Dansk" cannot be a false trade description as to the material of which the goods were composed, since it was not in any way descriptive of the material. It was a fancy name known in the trade as meaning a kind of margarine. This substance was margarine. Besides the name was a trade mark registered before the passing of the Act, and see sect. 18 of the Act. As to sub-sect. 1 (b) he contended that neither "Le Dansk" nor "Le Dansk, French Factory," amounted to a false trade description as to the place or country where the goods were made or produced, since the goods were produced in France. The real process of manufacture took place at the Le Dansk Factory at Paris. All that was done at Southampton was to add a little milk and butter.

*Fletcher Moulton*, Q.C. and *Morton Smith*, for the respondent, were not called upon.

LORD RUSSELL, C.J.—In my judgment this conviction must stand. The charge against the appellant was that he had in his possession for the purpose of sale a material to which was applied a false trade description. It was sought to support this charge on two grounds. The first was that the description applied to the goods were false as to the material of which the goods were composed. I do not think it necessary to give any final opinion on this point; but I may say that, if this were the only ground, I am inclined to think it would not be sufficient to support the conviction. Though the name "Le Dansk" indicates to the trade a particular kind of margarine, it indicates to the public

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Marks Act,  
1887—Trade  
description—  
Place where  
goods made—  
50 & 51 Vict.  
c. 28, ss. 2, 3.

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—  
*Merchandise  
Marks Act,  
1887—Trade  
description—  
Place where  
goods made—  
50 & 51 Vict.  
c. 28, ss. 2, 3.*

nothing as to the material of which the thing is composed. The fact that the words are registered as a trade mark might also afford a further defence under this head. But, as I have said, there is a second ground, and on it I think the conviction can be supported. That second ground is that there was here a false representation that the article was in fact of foreign origin. It is stated in the special case that there is a factory at Paris where the foundation of the article is manufactured. When the foundation leaves the factory it is merely oleomargarine, and it is so called. On coming to the factory at Southampton it is mixed with butter and milk. After this process has been gone through the product is a compound substance which gets the trade name of "Le Dansk." Therefore, for the first time the article receives the name of "Le Dansk" at Southampton. It is then for the first time the finished product known under that name. Under that name it was sold to the public as if it were manufactured in France, and this I think justified the magistrate in holding that the name under which it was submitted to the public was a false description as to the place or country where it was manufactured or produced.

CAVE, J.—I entirely concur.

Solicitors: for the appellant, *Neve and Beck*; for the respondent, *Urquhart Fisher*.

### QUEEN'S BENCH DIVISION.

*Friday, Oct. 25, 1895.*

(Before Lord RUSSELL, C.J. and CAVE, J.)

TOLER (app.) v. BISCHOP (resp.) (a)

*Margarine—Sale by retail—In or with a paper wrapper—Margarine Act, 1887 (50 & 51 Vict. c. 29), s. 6.*

*The respondent sold margarine by retail in thin cardboard boxes with a ribbon of paper round each box to keep it closed. Over ribbon and box was stamped "margarine" in letters a quarter of an inch square. When the appellant bought a quantity of margarine the respondent delivered the box containing it to him wrapped up in an unstamped paper covering, but it was not*

(a) Reported by J. A. STRAHAN, Esq., Barrister-at-Law.

clear whether the outside paper covering was put on at the request or not of the appellant. The magistrate dismissed a summons against the appellant for selling margarine not in or with a paper wrapper with "margarine" stamped on it contrary to sect. 6 of the Margarine Act, 1887 (50 & 51 Vict. c. 29).

*Held, that the dismissal was right.*

*Per Lord Russell, C.J.:* The cardboard box with ribbon constituted a paper wrapper within sect. 6, even though covered with another wrapper.

*Per Cave, J.:* A paper wrapper to satisfy sect. 6 must be an outer wrapper.

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1895.

*Sale of food—  
Margarine  
Act, 1887—  
Sale by retail  
—Paper  
wrapper—  
50 & 51 Vict.  
c. 29, s. 6.*

CASE stated by a metropolitan magistrate.

The respondent was the wife of the manager of a shop in Oxford-street, in which margarine of the kind known as Le Dansk was sold. The margarine was not exposed for sale, being kept in a cupboard which was only opened to take out what was from time to time sold. In the cupboard was a label marked margarine, but there were no notices about the shop to show that Le Dansk was not pure butter.

On the 21st Jan. Toler bought from the respondent two pounds of Le Dansk. It was handed to him in a thin cardboard box with the word "margarine" stamped partly on the box and partly on a ribbon of paper put round the box to keep it closed. This box was, before Toler received it, wrapped up in a piece of paper not having the word "margarine" stamped upon it, but it was not clear whether this outer wrapper was put on by the respondent in the ordinary way of business or at Toler's request. Toler summoned the respondent for having sold margarine by retail and not having delivered the same in or with a paper wrapper on which was printed in capital letters not less than a quarter of an inch square "margarine" contrary to the provisions of sect. 6 of the Margarine Act 1887 (50 & 51 Vict. c. 29). The magistrate dismissed the summons. Toler appealed.

*Fletcher Moulton, Q.C.* (with him *Morton Smith*), for the appellant.—The margarine sold here was sold either in a package in which case the letters of the word margarine not being three-quarters of an inch square were too small, or in a paper wrapper, in which case the wrapper is the outer covering, which here had not printed on it the word "margarine" at all.

*Bonsey* (with him *George Elliot* and *Fitch*) cited the case of *Jones v. Jones* (58 J. P. 653).

*LORD RUSSELL, C.J.*—The dismissal must stand. The substance of the charge is that the respondent sold margarine without a wrapper bearing the word "margarine" in letters of a certain size contrary to the provisions of sect. 6 of the Margarine Act. Now, sect. 6 consists of three special provisions, each applicable to the sale of margarine under different circumstances. The first provision is that "every package, whether open or

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*Sale of food—  
Margarine  
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wrapper—  
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closed, and containing margarine, shall be branded or durably marked 'margarine' on the top, bottom, and sides, in capital letters, not less than three-quarters of an inch square." This provision applies to sales in considerable quantities, and has no bearing on sales such as appear here. The second provision is, "And if such margarine be exposed for sale by retail, there shall be attached to each parcel thereof so exposed, and in such manner as to be clearly visible to the purchaser, a label marked in printed capital letters not less than one and a half inches square 'margarine.'" That is to say, when it is exposed for sale, it must be labelled in such a way that persons going into the shop may see what it is. Here the margarine was not exposed. The third provision is, "Every person selling margarine by retail, shall in every case deliver the same to the purchaser in or with a paper wrapper, on which shall be printed in capital letters, not less than a quarter of an inch square 'margarine.'" The question here is whether in the sale in this case this provision was duly observed. Now, it is important to note the words "in or with" since they show that the object of the Act is not to secure that the margarine shall be wrapped or folded in a paper stamped margarine; but that the purchaser should be supplied with clear means of knowing what he is getting. What are the facts of this case? The small parcel of margarine sold is put into a box made of the same material as paper. The box is stamped margarine in letters at least a quarter of an inch square. The stamped box is put into a ribbon of paper, on or with which is an advertisement with the word margarine stamped on it in letters of similar size. Now, I would hesitate a long time before holding that the paste-board box is not a paper wrapper within the Act, but taking the box and the paper ribbon together I have no hesitation in holding that it is. It is, however, contended that the stamped wrapper in order to satisfy the Act must be the outer wrapper. A wrapper is none the less a wrapper, because it is afterwards wrapped up in another wrapper. This view is strongly supported by the case of *Jones v. Jones*, cited by Mr. Bonsey. At the same time I think it is a pity the magistrate was not asked at whose motion the outer wrapper was put on. If it was put on by the respondent to conceal the word margarine the proceeding was to say the least highly censurable; but if, as seems more probable, it was put on at the request of the appellant, the object could only have been to trap the respondent into a breach of the Act, and it would be monstrous to prosecute.

CAVE, J.—I have arrived at the same conclusion, and will merely state my reasons why we do not give the respondent costs. I cannot help thinking that to satisfy sect. 6 it is the outer paper wrapper which must be stamped. Considering the object of the Act is to give the purchaser notice of what he is buying, I cannot see how the fact that an inner wrapper is stamped can be considered a compliance with the Act. Here,

however, we do not know whether the outer wrapper was put on at the request of the vendee or by the vendor in the ordinary way of business. If it was put on at the request of the vendee I cannot understand how one can think it was put on for any other purpose than trapping the vendor into a breach of the Act. If put on by the vendor as the ordinary way of transacting business, then the object plainly was to evade the Act. In either case I am inclined to think that an offence was probably committed; but in the former case the penalty should not be more than one farthing. I am strongly of opinion that the outside wrapper was put on at the request of the vendee, and therefore I think the appeal should be dismissed, but as probably a technical offence was committed it will be dismissed without costs.

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*Sale of food—  
Margarine  
Act, 1887—  
Sale by retail  
—Paper  
wrapper—  
50 & 51 Vict.  
c. 29, s. 6.*

*Appeal dismissed.*

Solicitors: for the appellant, *O. Urquhart Fisher*; for the respondent, *Neve and Beck*.

## QUEEN'S BENCH DIVISION.

*Tuesday, Nov. 12, 1895.*

(Before Lord RUSSELL, C.J., GRANTHAM and WILLIAMS, JJ.)

REG. v. JENNINGS AND OTHERS. (a)

*Industrial Schools Act, 1866 (29 & 30 Vict. c. 118), ss. 14, 15—  
Procedure — Dismissal of charge of larceny—Child sent to  
school without fresh summons—Benevolent not penal legislation.*

*A child under the age of fourteen was brought before magistrates charged with larceny, which charge was dismissed. Thereupon the magistrates, purporting to act under sects. 14 and 15 of the Industrial Schools Act 1866, ordered the child to be sent to an industrial school. No fresh summons was issued against the child other than that charging him with larceny.*

*Held, that there was jurisdiction to make the order without a fresh summons, the Industrial Schools Act being not a penal but a benevolent and protective Act for the benefit of children.*

**R**ULE nisi for a certiorari to bring up and quash an order of the justices of Stonehouse division of Devonshire

(a) Reported by G. H. GRANT, Esq., Barrister-at-Law.



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Schools Act,  
1866—Dis-  
missal of  
charge—Child  
sent to school  
—No fresh  
summons—  
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15.

whereby they ordered one Albert Simons to be sent to an industrial school.

The boy attended before the justices upon a summons charging him with stealing a boat. This charge was dismissed, but the magistrates having the child before them, and hearing from the mother who was present that he refused to go to school and associated with young thieves, made an order under sects. 14 and 15 of the Industrial Schools Act that he should be sent to an industrial school.

The father of the child then obtained this rule.

The justices were not represented by counsel.

*E. U. Bullen* for the applicant.—The justices had no power to make this order upon a summons charging the child with larceny. The proper way of “bringing” a child before justices to be dealt with under sect. 14 of the Industrial Schools Act is by summons: (*Reg. v. Moore*, 352 J. P. 375). A person cannot be convicted of an offence different from that charged in the information or summons: (*Martin v. Pridgeon*, 28 L. J. 179, M. C.; *Reg. v. Brickhall*, 10 L. T. Rep. 385; 33 L. J. 156, M. C.). [Lord RUSSELL, C.J.—I agree, but this Act is a piece of social legislation with the benevolent object of safeguarding the child; and he may be before the magistrates without any fault at all, under sect. 15.] The Act is penal and must be strictly construed.

Lord RUSSELL, C.J.—In this case a rule *nisi* for a *certiorari* has been obtained to bring up an order of justices by which they, purporting to act under the Act 29 & 30 Vict. c. 118, ordered a child of the applicant to be sent to an industrial school. The rule was obtained upon the allegation that the justices had no jurisdiction to make an order for two reasons: first, that there was no evidence which would bring the child within sect. 14; and secondly, that the justices could not deal with the child at all under the Act unless there was a specific charge brought against him under the Act, and the child was brought before the magistrates upon that charge. As to the first of these reasons, the affidavit of the magistrates satisfies us that there was ample evidence before them to bring the child within sect. 14. As regards the second reason, the child was brought before the magistrates charged with larceny. Now, a number of cases have been cited to show that he could not be dealt with upon another charge, and with those cases I agree. But the question is, have they any application to the statute before us? In my judgment they have not. This is not a statute of a criminal kind. It is rather one of a benevolent and protective kind towards children, and one of its objects is to offer an alternative treatment of children instead of punishing them. The whole scheme of the Act is this, that if a child is brought in any way before justices, and the circumstances make it desirable that he should be dealt with under sects. 14 and 15, then, if the facts of the case justify them in doing so, the justices may deal with the child under those sections. Now, without going into all the facts in this case, it is

clear that this child came within those sections. He was troublesome to his parents, and had got into bad company. One of the parents was present, and showed satisfactorily that the child was within the section, and the parent made no objection to the order of the magistrates. I think, therefore, the justices had jurisdiction to make the order, and the appeal must be dismissed.

GRANTHAM and WILLIAMS, JJ. concurred.

*Appeal dismissed.*

Solicitors : *Law and Worssam.*

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OTHERS.

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Industrial  
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1866—Dis-  
missal of  
charge—Child  
sent to school  
—No fresh  
summons—  
29 & 30 Vict.  
c. 118, ss. 14,  
15.*

## CROWN CASES RESERVED.

*Saturday, Nov. 23, 1895.*

(Before Lord RUSSELL, C.J., MATHEW, WILLIAMS, WRIGHT, and  
BRUCE, JJ.)

REG. v. JONES AND ANOTHER. (a)

*Practice—Indictment—Act of indecency between two male persons  
—One person charged alone with committing act with another—  
Procuring commission of act of indecency—Male person charged  
with procuring commission of act with himself by another—  
Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69),  
s. 11.*

*It is not necessary in order to convict a male person under sect. 11  
of the Criminal Law Amendment Act, 1885, of an act of gross  
indecency with another male person, that such other male person  
should also be charged with and convicted of such act of  
indecency.*

*It is an indictable offence under sect. 11 for one male person to  
procure the commission by a second male person of an act of  
gross indecency with himself the first mentioned of such persons.*

CASE stated for the opinion of the Court by Wills, J. as  
follows:—

Robert Jones and Harry Lewis Bowerbank were tried before  
me, at Exeter, on the 13th day of November, 1895, on an indict-  
ment containing the following counts:

1. That Robert Jones, on the 6th day of September, 1895, with force and arms at  
the parish of Littleham-cum-Exmouth, in the county of Devon, being a male person,  
unlawfully did commit an act of gross indecency with another male person to wit,  
Harry Lewis Bowerbank, against the form of the statute in such case made and  
provided

(a) Reported by R. CUNNINGHAM GLEN, Esq., Barrister-at-Law.

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*Practice—  
Criminal Law  
Amendment  
Act, 1885—  
Indictment—  
Indecency  
between males  
—Charge of  
act with  
another  
person not  
charged—  
Procuring  
commission of  
act with  
oneself—  
48 & 49 Vict.  
c. 69, s. 11.*

2. That the said Harry Lewis Bowerbank, on the same day and in the year aforesaid, in the county aforesaid, with force and arms at the parish aforesaid, in the county aforesaid, being a male person, unlawfully did commit an act of gross indecency with another male person to wit, the said Robert Jones, against the form of the statute in such case made and provided, and against the peace of our Lady the Queen, her Crown and dignity.

3. That the said Robert Jones, on the same day in the year aforesaid, at the parish aforesaid, in the county aforesaid, being a male person, unlawfully did procure the commission by a male person to wit, the said Harry Lewis Bowerbank, of an act of gross indecency with another male person to wit, with him the said Robert Jones, against the form of the statute in such case made and provided.

Mr. Howland Roberts, the counsel for the prosecution, offered no evidence against Bowerbank, and a verdict of not guilty was returned in respect of the second count. The trial against Jones then proceeded. Bowerbank was called as a witness, and a general verdict of guilty was returned against Jones, who was sentenced to nine months' imprisonment with hard labour, which he is now undergoing.

Mr. Foote, of counsel for the prisoner, took, at the close of the case for the prosecution, the following objections :

1. That the prisoners being charged and tried on the same indictment the jury could not, having acquitted Bowerbank on the second count, convict Jones on either the first or third count, the offences charged being joint, and requiring the participation of both prisoners in the act.

2. That the third count was bad, and should have been quashed or withdrawn from the jury, on the ground that it is not made by the act an indictable offence for one male person to procure the commission by a second male person of an act of indecency with himself the first of such male prisoners.

I was of opinion with regard to the first objection that the offence charged was not a joint one, and that it was quite possible in respect of such an indictment to have evidence which would establish the case against one defendant and not against the other, though the act constituting the crime might involve the participation of both.

As to the second objection I expressed no opinion, but reserved both points.

Judgment has been entered upon each count. As there were no merits in the objections, and the case was clearly established, I did not respite judgment.

The question for the Court is whether the conviction is to stand upon either the first or third count.

Sect. 11 of the Criminal Law Amendment Act, 1885, enacts as follows :

Any male person who, in public or private, commits or is party to the commission of, or procures or attempts to procure the commission by any male person of any act of gross indecency with another male person shall be guilty of a misdemeanour, and being convicted thereof shall be liable at the discretion of the Court to be imprisoned for any term not exceeding two years, with or without hard labour.

No one appeared in support of, or against the conviction.

Lord RUSSELL, C.J.—Two questions appear to be made in this case. The first is raised upon the first count of the indictment, while the second question is raised upon the third count. The first count charges that Robert Jones, in connection with whom this case is stated on the 6th day of Sept., 1895, being a male

person, unlawfully did commit an act of gross indecency with another male person to wit Harry Lewis Bowerbank. The objection taken by the learned counsel at the trial was that the two prisoners being charged and tried upon the same indictment, and Bowerbank, with whom the offence was alleged to have been committed, having been acquitted, the prisoner Jones could not be convicted of an offence with Bowerbank. It does not appear however, on the face of this indictment that the transaction or offence charged against Bowerbank in the second count of the indictment is the same as that alleged in the first count. The point is therefore reduced to this, that we are asked the question: Can a male person be charged with the commission of a gross act of indecency with another male person without that other person being charged in respect of such act as well? There is really nothing in the point, and it seems to me that he can. The second point is raised on the third count, which charges that Jones did procure the commission with himself of a gross act of indecency by another male person, and the point is that upon a proper construction of the 11th section of the Criminal Law Amendment Act, 1885, the procurement must be of the commission of an act by someone else, with someone other than the person charged. That does not seem to be the right construction of the section at all however. The section enacts that any male person who procures the commission by any male person of any act of gross indecency with another male person, shall be guilty of a misdemeanour. Why should not the man charged with the offence himself be that other male person? The language of the section is equivalent to saying, "with the party charged, or some other person." There is no substance in either of the points raised by the case, and the conviction must therefore stand.

MATHEW, WILLIAMS, WRIGHT, and BRUCE, JJ., concurred.

*Conviction affirmed.*

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1895.  
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Practice—  
Criminal Law  
Amendment  
Act, 1885—  
Indictment—  
Indecency  
between males  
—Charge of  
act with  
another  
person not  
charged—  
Procuring  
commission of  
act with  
oneself—  
48 & 59 Vict.  
c. 69, s. 11.

## CROWN CASES RESERVED.

*Saturday, Nov. 23, 1895.*

(Before Lord RUSSELL, C.J., MATHEW, WILLIAMS, WRIGHT, and  
BRUCE, JJ.)

REG. v. GAUNT. (a)

*Common assault—Jurisdiction of justices to commit for trial—  
Proceedings not authorised by party aggrieved—Jurisdiction of  
grand jury to find true bill—24 & 25 Vict. c. 100, s. 46.*

*An indictment for a common assault may be preferred by a  
person other than the person aggrieved or someone on his  
behalf.*

*Where proceedings had been instituted before justices in respect  
of a common assault without the authority of the person  
assaulted, and the justices committed the defendant in such  
proceedings for trial under 24 & 25 Vict. c. 100, s. 46, and a  
true bill was found by the grand jury.*

*Held, that the grand jury had acted within its jurisdiction in  
finding a true bill, and that the defendant had been rightly put  
upon his trial pursuant to such finding.*

CASE stated for the opinion of the Court by the Deputy-  
Chairman of the Huntingdon Quarter Sessions as  
follows :—

At the General Quarter Sessions of the Peace in and for the  
County of Huntingdon held at Huntingdon on the 15th day of  
October, 1895, Thomas Gaunt was tried and convicted upon an  
indictment of which the following is a copy :

County of Huntingdon (to wit).—The jurors for our Lady the Queen, upon their  
oath, present that Thomas Gaunt, on the sixteenth day of August, in the year of  
our Lord one thousand eight hundred and ninety-five, in and upon one Victor  
Grantley did make an assault, and him, the said Victor Grantley, did then beat,  
wound, and ill-treat, and other wrongs to the said Victor Grantley then did to the  
great damage of the said Victor Grantley, against the peace of our Sovereign Lady  
the Queen, her Crown and dignity.

On the prisoner being asked to plead he declined to do so on  
the advice of his counsel, who moved to quash the indictment,  
and contended that the Court had no jurisdiction to try the indict-  
ment upon the ground that the proceedings before the justices  
in petty sessions had not been taken by or on behalf of Victor  
Grantley, or by his authority, and that an indictment for a common  
assault could only be preferred by the person aggrieved, or by  
some one on his behalf.

(a) Reported by R. CUNNINGHAM GLEN, Esq., Barrister-at-Law.

It appeared that on the 19th day of August the prosecutor, from information that an assault had been committed upon Victor Grantley, caused Victor Grantley to be medically examined. The following is a copy of the medical certificate :

I hereby certify that I have this day, in company with Sergeant Griffin, examined an idiot youth at the residence of Mr. Thomas Gaunt. I find the youth well nourished, clean and free from bruises or excoriations on the limbs and trunk. He has, however, a couple of black eyes, the bruises evidently having been inflicted three or four days ago, and which he accounts for by a fall out of his carriage. This story is quite consistent with the appearance and situation of the bruises.—D. McRITCHIE, M.B.—Aug. 19, 1895.

On the 21st day of August, 1895, the following information was laid by James Griffin, a police-sergeant of the county of Huntingdon :

Borough of Huntingdon (to wit).—The information of James Griffin of Huntingdon, in the county of Huntingdon, sergeant of police, by and on behalf of Victor Grantley, taken this 21st day of August, 1895, before the undersigned, one of Her Majesty's justices of the peace, acting at Huntingdon, in and for the said borough, who saith that one Thomas Gaunt, of the parish of Saint Mary, in the said borough, on the 16th day of August instant, at the parish aforesaid, did unlawfully assault and beat one Victor Grantley, of the said parish, contrary to the statute in such case made and provided.—Taken before me (Signed) GEORGE THACKRAY. — (Signed) JAMES GRIFFIN.

Upon this information a summons was issued under 24 & 25 Vict. c. 100, s. 42, and duly served on the defendant.

At the hearing of the information on the 29th day of August the defendant appeared, and, after hearing the evidence both on the part of the informant and of the defendant, the said Victor Grantley being called on behalf of the defendant, the justices committed the defendant for trial under the 46th section of 24 & 25 Vict. c. 100, on the ground that the assault was a fit subject for a prosecution by indictment.

On behalf of the defendant it was contended that, as Victor Grantley was over the age of fourteen years, which was proved, and had not authorised the said James Griffin to institute proceedings before the justices on his behalf, that the justices had no jurisdiction whatever either to convict or to send for trial, and that the bill of indictment found by the grand jury ought to be quashed, and counsel quoted the case of *Nicholson v. Booth* (57 L. J. 43, M. C.).

It appeared at petty sessions, and also during the trial that, Victor Grantley was not an idiot or a person of defective mind, but was paralysed in the lower part of his body, and was also subject to epileptic fits; but he was called and examined as a witness on behalf of the defendant. I declined to quash the indictment, being of opinion that, as the indictment had been found by the grand jury, it was the duty of the Court to proceed with the trial. A plea of not guilty was entered, and the defendant was convicted.

I desire the opinion of the Court as to whether the objection taken by the defendant's counsel was valid; if so, the conviction is to be set aside, otherwise to stand.

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1895.

Assault—  
Justices'  
jurisdiction—  
Committal for  
trial—Pro-  
ceedings by  
other than  
party  
aggrieved—  
Powers of  
grand jury —  
24 & 25 Vict.  
c. 100, s. 46.



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v.  
GAUNT.  
—  
1895.  
—

By sect. 42 of 24 & 25 Vict. c. 100, it is enacted that,

Where any person shall unlawfully assault or beat any other person, two justices of the peace, upon complaint by or on behalf of the party aggrieved, may hear and determine such offence.

Sect. 46 enacts :

Assault—  
Justices'  
jurisdiction —  
Committal for  
trial—Pro-  
ceedings by  
other than  
party  
aggrieved—  
Powers of  
grand jury —  
24 & 25 Vict.  
c. 100, s. 46.

Provided, that in case the justices shall find the assault or battery complained of to have been accompanied by any attempt to commit felony, or shall be of opinion that the same is for any other circumstance a fit subject for a prosecution by indictment, they shall abstain from any adjudication thereupon, and shall deal with the case in all respects in the same manner as if they had no authority finally to hear and determine the same.

*J. W. Cooper*, on behalf of the defendant, submitted that it was only upon the information of the party aggrieved, or someone acting on his behalf, that the magistrates could act under 24 & 25 Vict. c. 100, s. 46, and that no such information having been laid in the present case, the magistrates were wrong in committing for trial. That the committal for trial was therefore bad, and all subsequent proceedings were also bad, being founded upon the committal by the magistrates.

No one appeared in support of the conviction.

LORD RUSSELL, C.J.—This is an application to quash an indictment which has been regularly found by the grand jury attending the Quarter Sessions of Huntingdonshire. As far as I have been able to follow the argument it is of this nature: It is said that this is a case in which a charge of assault is preferred; and that therefore the charge must be preferred by or on behalf of the person aggrieved under 24 & 25 Vict. c. 100, s. 42; that the charge in this case was not in fact preferred by or on behalf of the party aggrieved, and therefore the magistrates were wrong in sending the defendant for trial. Now, even if that were so, a true bill of indictment has been found by the grand jury upon evidence which was satisfactory to them; and the offence not being an offence within the Vexatious Indictments Act, what took place before the magistrates may be left entirely out of the question. The case which was cited before the quarter sessions is no authority upon the present case; and on the short grounds I have stated it seems to me the conviction must stand.

MATHEW, WILLIAMS, WRIGHT, and BRUCE, JJ., concurred.

*Conviction affirmed.*

Solicitors for the defendant, *Hunnybun and Son*, of Huntingdon.

## QUEEN'S BENCH DIVISION.

*Saturday, Jan. 18, 1896.*

(Before Lord RUSSELL, C.J., WRIGHT and KENNEDY,

*Re GALWEY. (a)*

*Extradition—Fugitive criminal—British subject—Jurisdiction of British Government to surrender British subject to Belgium—Treaty between Great Britain and Belgium—Extradition Act, 1870 (33 & 34 Vict. c. 52), s. 6.*

*By an extradition treaty made between the British and Belgian Governments—to which the Extradition Acts were applied by Order in Council—it was provided that: “In no case, nor on any consideration whatever, shall the High Contracting Parties be bound to surrender their own subjects.”*

*Held, that, under this treaty, while the executive Government of this country are not bound to surrender a fugitive criminal who is a British subject, they have a discretion to surrender and may surrender such person, although a British subject, upon a primâ facie case being made out and the requirements of the Extradition Acts being duly complied with.*

**R**ULE calling on the Governor of Her Majesty's prison at Holloway to show cause why a writ of *habeas corpus* should not issue directed to him commanding him to have the body of Frederick Galwey before the Court.

Notice of the rule was directed to be given to the governor of the prison, the ambassador for the kingdom of Belgium, the Home Secretary, and the committing magistrate.

Galwey was on the 11th day of December, 1895, brought up at Bow-street, and on the 1st day of January, 1896, was committed by Mr. Vaughan, police magistrate, for extradition to the kingdom of Belgium on a charge of fraudulently receiving valuable securities well knowing them to be stolen within the jurisdiction of the kingdom of Belgium.

The rule was obtained on the sole ground that Galwey is a British subject, and as such is not liable to the Extradition Act, 1870, and the treaty and declaration purporting to be made pursuant thereto.

In 1812 the father of the prisoner was born in Ireland, and in 1838 went to Bruges in the kingdom of Belgium, and remained and was married there in 1845, and he was then a British subject, and declared himself to be such. In 1846 the prisoner was born

*Re GALWEY.* at Bruges, and resided there until 1870, when he came to England, and, except during part of the year 1888 when he was in Brussels, he has resided in England ever since.

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The learned magistrate held that a *prima facie* case had been made out against the prisoner, and that he was not a British subject, and he made the committal order for extradition.

For the purposes of this argument it was assumed and admitted that Galwey is a British subject, domiciled in Belgium, and that he has been domiciled in Belgium practically all his life.

The Extradition Act, 1870 (33 & 34 Vict. c. 52) provides :

Sect. 6. Where this Act applies in the case of any foreign state, every fugitive criminal of that state who is in or suspected of being in any part of Her Majesty's dominions, or that part which is specified in the order applying this Act (as the case may be), shall be liable to be apprehended and surrendered in manner provided by this Act, whether the crime in respect of which the surrender is sought was committed before or after the date of the order, and whether there is or is not any concurrent jurisdiction in any Court of Her Majesty's dominions over that crime.

The Treaty between Her Majesty and the King of the Belgians for the Mutual Surrender of Fugitive Criminals (signed at Brussels, the 20th day of May, 1876), provides :

Art. 1. It is agreed that Her Britannic Majesty and His Majesty the King of the Belgians shall, on requisition made in their names by their respective diplomatic agents, deliver up to each other reciprocally any persons [except as regards Great Britain, native born and naturalised subjects of Her Britannic Majesty, and, except as regards Belgium, those who are by birth or who may have become citizens of Belgium], who being accused or convicted as principals or accessories, of any of the crimes hereinafter specified, committed within the territories of the requiring party, shall be found within the territories of the other party.

By a declaration between the British and Belgian Governments for amending art. 1 of the Extradition Treaty of the 20th day of May, 1876 (signed at London the 21st day of April, 1887, and Extradition Acts applied by Order in Council from the 30th day of May, 1887), it is provided :—

Art. 1.—The words "Except as regards Great Britain, native born or naturalised subjects of Her Britannic Majesty, and, except as regards Belgium, those who are by birth, or who may have become citizens of Belgium," which occur in art. 1 of the Extradition Treaty of the 20th day of May, 1876, are suppressed.

Art. 2.—The following paragraph is added to art. 1 of the said treaty: "In no case, nor on any consideration whatever, shall the High Contracting Parties be bound to surrender their own subjects, whether by birth or naturalisation."

Sir *Richard Webster*, A.-G. (Sir *Robert Finlay*, S.-G., and *Sutton* with him) showed cause against the rule.—The only ground on which this rule was granted was that on the terms of the treaty there is no power to deliver up a British subject, and for the purposes of this argument Galwey must be taken to be a British subject, for, although the magistrate held that he was not a British subject, on the materials before the Court it could not be contended that he was not, and there was a *prima facie* case that he was. Upon the terms of the treaty it was abundantly clear that he could be given up although he was a British subject. First came the Treaty of 1876, and under another treaty, which had

practically the same excluding words, Cockburn, C.J. in the year 1877, in *Reg. v. Wilson* (3 Q. B. Div. 42) expressed his regret that British subjects could not be handed over. It was argued in that case that the language of the Act ought not to be construed as imperative, but as discretionary, but it was pointed out by Cockburn, C.J. that the treaty did not give a discretion, for it said that no British subject should be delivered up. The treaty under which that case was decided was the treaty between Her Majesty and the Swiss Confederation made in March, 1874, and contained words similar to those in the Treaty of 1876, which the Court was now considering; and it was probably in view of the objection taken in that case that the words in the Treaty of 1876 were suppressed and the words in the Declaration of 1887 substituted, and Field, J. at the end of his judgment in that case said—speaking of the treaty then in question—“It is not that one country shall not be bound to deliver up, but that no subject shall be delivered up to the other country.” So that Field, J. there uses the words which are subsequently embodied in the present treaty. The Secretary of State always had a discretion in the matter whatever the circumstances were, and that discretion he still retained, and it was reasonable to expect that in any treaty there was still that discretion left, and accordingly the words used were that in no case should the parties be bound to surrender their own subjects. These words gave a discretion and could not be construed as importing prohibition; and as it was in the interests of international justice that criminals should not be retained unless for good cause, it was also in such interests that this discretion should still exist. The Court in *Reg. v. Wilson* (*ubi sup.*) expressed with regret the view that they could not order the criminal to be handed over, and there was now a treaty between the two countries, which enabled justice to be done, and when there was clear proof of the crime the Court could hand over the British subject, although it was not bound to do so if for good reasons the Secretary of State thought fit not to hand him over.

*F. M. Abrahams* for the Belgian Government informed the Court that that Government was anxious for the extradition to be proceeded with.

*Bower* in support of the rule.—It was not necessary to contend that the British Government was prohibited from handing over; but when once it was shown that the accused was a British subject it was for the Crown to contend and to prove that they were compelled to hand him over. The Crown had to establish that. [Lord RUSSELL, C.J.—The treaty does not prohibit or render unlawful the handing over; all it says is that the Executive Government shall not be bound to hand over. If that is so, is it not a matter for the exercise of the political discretion of the executive and not for the judicial?] That was so, but the prisoner was still entitled to the rule, as he was not in prison in the exercise of a discretion of a political officer of the Government. There had been

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no such discretion exercised; there was a hearing by the magistrate, and a remitting of the accused to prison on the theory that he was a person liable to be surrendered under sect. 6 of the Extradition Act, 1870. As between the two contracting countries there was no treaty obligation on Great Britain to hand him over to Belgium; and as between the Government of this country and the accused there was no right to hand him over. Allegiance implied protection; the accused owed Her Majesty allegiance; she owes him protection and she could not hand him over unless absolutely bound to do so by treaty. The case was as if, *quod* British subject, there were no treaty whatever. All a subject could say would be that Her Majesty was not bound to hand him over; and it could never be said in the case of a subject that she had prohibited herself from handing him over. If there had been communications between the proper representatives of the two Governments, and as the result Her Majesty had agreed to hand him over, there might be nothing to say; but that was not the case. Here the man was in prison, and could only be lawfully in prison on the theory that he was lawfully liable to be surrendered under sect. 6 of the Act of 1870. The treaty showed that the Government was not bound to surrender the accused, but he was in prison on the theory that he was bound to be surrendered.

Lord RUSSELL, C.J.—In my judgment the rule in this case must be discharged. For the purpose of considering the question before us we assume—for it has not been questioned—that the offence in respect of which the prisoner is detained under an order of committal is one within the treaty and the statute. We must also assume that he is a British subject, and in my judgment we must further assume that the demand for extradition by the Belgian Government is assented to and supported by the executive Government of this country. The question turns upon the construction of the Extradition Act, 1870, into which and in connection with which is to be read the terms of the treaty. Now the treaty, originally made in 1872, was modified in 1876, and as modified in 1876 it contained, as it originally stood, this stipulation, that Her Britannic Majesty and the King of the Belgians shall, on requisition made in their names by the respective agents of the other power, deliver to each other respectively any persons—then follow these words for which I cite the passage—“Except as regards Great Britain native-born and naturalised subjects of Her Britannic Majesty.” As the treaty then was, assuming the case of *Reg. v. Wilson (ubi sup.)* to have been properly decided, assuming the treaty to have stood in that position, the Extradition Act would not have authorised the extradition of the criminal, because from extradition were excepted native-born and naturalised subjects of Great Britain. That the case of *Reg. v. Wilson (ubi sup.)* decides, and I think rightly decides. I do not stop to consider whether, even if the treaty did not

apply, there might not have been some other steps taken with the view to extradition. *Reg. v. Wilson (ubi sup.)* decides, and rightly decides, that extradition could not be made under the treaty and the Extradition Act which applied to the treaty. That being the original form of the treaty, it was subsequently altered, and it is quite probable that it was altered because of the case of *Reg. v. Wilson (ubi sup.)*, or of other cases in the same sense, for in that case Cockburn, C.J. expresses regret that this country should not be enabled, under the extradition law then existing, to deliver in proper cases even British subjects who have offended against the laws of another country, as to which offences against the laws of another country, even although they might be crimes, and probably would be crimes common to both countries, yet they could not be adequately dealt with or punished under the criminal law in this country. Accordingly in 1887, the treaty is designedly altered; the excepted words, which excluded native-born and naturalised subjects of Great Britain altogether from extradition under the statute and the then existing treaty, are excluded and these words are substituted, "In no case nor on any consideration whatever shall the High Contracting Parties be bound to surrender their own subjects, whether by birth or naturalisation." What does that mean? It means surely that while they are not bound they may under the treaty, and any legal enactment which relates to the treaty, make such extradition. Then we turn to the statute in connection with which the treaty has to be construed. Sect. 6 provides: [His Lordship read the section and proceeded:] The Act applies in the case of this foreign State, Belgium, but it was contended on behalf of the prisoner that in the present case the prisoner is not so liable to be apprehended and surrendered. It seems to me he clearly was. Let us conceive the case of an application being made to a Secretary of State—and no particular Secretary of State is referred to in the Act—and that in that application in any given case the facts of which might be notorious, such as (amongst others) that the person against whom the application was made is a British subject, and that the circumstances under which he was charged with having committed a crime were such that in the clear opinion of the Secretary of State, the officer of the Government, he ought not to assent to his extradition and ought not to exercise the power which the treaty and the Act conjointly give, then it clearly would be within his competence to say, "I shall not assist the extradition of this particular alleged criminal." In this case, however, what the secretary did was to sign a warrant in conformity with the terms of the first form of the second schedule to the Act. This warrant was addressed to the chief magistrate of the metropolitan police-court, and it recited the treaty arrangement and the Order in Council applying the Act; it also stated that a requisition had been made to one of the principal Secretaries of State by diplomatic representatives

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for the surrender of a particular person; then it proceeded: "Now, I hereby by this my order under my hand and seal, signify to you"—that is the chief magistrate—"that such requisition has been made and require you to issue your warrant for the apprehension of such fugitive, provided that the conditions of the Extradition Act, 1870, relating to the issue of such warrant, are in your judgment complied with." It seems to me that that is as clear and distinct an assent on the part of the representatives of the executive Government to the demand for extradition as can possibly be, and I decline entirely to give any effect to the argument which may be stated compendiously thus: It is not denied that there might be such a requisition made by the diplomatic representatives of the demanding power to the executive Government here, but the suggestion is that that must be shown to have been a formal demand, and that the assent must have been given by the Secretary of State in some other way than by his signing the form of order which I have cited to the stipendiary magistrate. I do not for a moment mean to convey that the Secretary of State, having given that order to the chief magistrate of the metropolitan police-courts, may not, when at a later stage he becomes more fully aware of the facts than he was before, withdraw that assent, even at a later stage, and say that this is not a case in which the executive Government of this country think that extradition ought to be granted. I am far from saying that even at this moment, or at a later moment, before the accused is handed over to the foreign Government, if there be grounds for urging it, it is not perfectly open to those representing the person now in custody to make representations to the Crown if reasons exist why extradition should not be made. But all these considerations are matters of a political complexion, and they are not matters which enter into the duty of the judiciary to determine. The man having been taken into custody, is brought before the metropolitan police magistrate, and an order of committal made, and, after such order of committal, we would be entitled to review the decision of the magistrate, not in the sense of entertaining an appeal from his decision, but in the sense of determining whether there was sufficient evidence of the offence and of the other necessary conditions for the application of the Act to give the magistrate jurisdiction to make the order of committal. It seems to me that the only ground on which this *habeas corpus* can be successfully maintained is that the committal order was made without jurisdiction, and was illegal. I see no ground or pretence whatever for making any such contention, and I think this application is not in any sense well founded. Lastly, upon this argument before us the executive Government of the country appear in the only way in which they can be represented in our courts, by the recognised law officers of the Government of the day. They are here expressing the wish of the executive Government that this extradition shall

take place, and it seems to me it is impossible for us to go beyond that and to entertain any considerations which may or may not—if they exist—be properly addressed in another quarter. I would observe that it is quite obvious, without pointing it out in detail, that the whole tenor of the argument for the accused is in contravention of the argument, and of the judgment in the case of *Reg. v. Wilson (ubi sup.)*, and Field, J. in one passage in his judgment in that case contemplates this very case. He pointed out that in that particular case, as the treaty with Switzerland then stood, extradition of British subjects was excluded, and he also pointed out how different would the result of the decision of the Court have been if it had not been an exclusion, but had been a case in which an option was left to the Government. He says: “Is there not in this very treaty an exception? It is not that one country shall not be bound to deliver up, but that no subject shall be delivered up to the other country.” On these grounds I think that this application must entirely fail, and that this rule must be discharged.

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WRIGHT and KENNEDY, JJ. concurred.

*Rule discharged.*

Solicitor for the applicant, *Joseph Davis*.

Solicitor for the Crown, *The Solicitor to the Treasury*.

Solicitors for the Belgian Government, *Michael Abrahams, Sons, and Co.*

## QUEEN'S BENCH DIVISION.

*Monday, Feb. 3, 1896.*

(Before LAWRENCE and COLLINS, JJ.)

**HIDES v. LITTLEJOHN** (Medical Officer of Health for Sheffield). (a)

*Local government—“Slaughter-house”—“So continued to be used”—Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), s. 126, and Local Government Act, 1858 (21 & 22 Vict. c. 98).*

*“Slaughter-house” as used in the Towns Improvement Clauses Act, 1847, and the Local Government Act, 1858, includes not merely the premises where the actual slaughtering of cattle takes place, but also the premises used for processes connected with or*

(a) Reported by J. A. STRAHAN, Esq., Barrister-at-Law.

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*incident to the slaughtering; and premises in use for these processes, even though no actual slaughtering of cattle takes place within them, are used as slaughter-houses within sect. 126 of the Towns Improvement Clauses Act, 1847.*

*A. was owner of certain premises in Sheffield, which for many years previously to the adoption of the Local Government Act, 1858, by the borough had been used for the slaughter of cattle. In January, 1893, he ceased to slaughter cattle there, but used the premises for "pinning" cattle preparatory to slaughter. In March, 1895, he again began to slaughter cattle there. On summons for using as a slaughter-house an unlicensed place, the magistrate held that, as no cattle had been slaughtered on the premises between January, 1893, and March, 1895, the premises had not been "so used," or "continued to be used as such," within sect. 126 of the Towns Improvement Clauses Act, 1847, and convicted A. On appeal:*

*Held, that the conviction was wrong.*

CASE stated by Sheffield police magistrate.

On the 28th day of May, 1895, the appellant Hides was charged at the instance of the respondent with having on the 28th day of March, 1895, used "as a slaughter-house a certain place . . . without having first obtained a licence for the erection thereof, or for the use and occupation thereof, from the council of the said city, such place not being in use and occupation as a slaughter-house at the time of the adoption by the council of the borough of Sheffield of the Local Government Act, 1858."

The Local Government Act, 1858 (21 & 22 Vict. c. 98), which was duly adopted by the borough of Sheffield on the 7th day of July, 1864, incorporates the provisions of the Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34) relating to slaughter-houses.

Sect. 126 of the Towns Improvement Clauses Act, 1847, is as follows :

No place shall be used or occupied as a slaughter-house or knacker's yard within the said limits which was not in such use and occupation at the time of the passing of the special Act, and has so continued ever since, unless and until a licence for the erection thereof, or for the use and occupation thereof as a slaughter-house or knacker's yard, have been obtained from the commissioners; and every person who, without having first obtained such licence as aforesaid, uses as a slaughter-house or knacker's yard any place within the said limits not used as such at the passing of the special Act, and so continued to be used ever since, shall for each offence be liable to a penalty not exceeding five pounds, and a like penalty for every day after the conviction for such offence upon which the said offence is continued.

Sect. 127 provides that within three months after the passing of the special Act every place used as a slaughter-house or knacker's yard shall be registered, and imposes a penalty for the use of an unregistered place as a slaughter-house or knacker's yard.

For many years previously to, and on the 7th day of July,

1864, the place in question was subdivided into three sub-tenancies or holdings, and between them had been and was then used and occupied for "pinning" (*i.e.*, fasting) cattle for slaughter, and for actually slaughtering cattle therein, and the magistrate found as a fact that the place was in use and occupation as a slaughter-house within the meaning of sect. 126 of the Act of 1847 at that time, and that, after the 7th day of July, 1864, there was due registration of the place under sect. 127.

From July, 1864, to the end of January, 1893. the place continued to be used as a slaughter-house.

Towards the end of 1892 the three sub-tenants of the premises were served with notices under the Public Health Act, 1875, requiring them to do certain works to abate a nuisance on the premises. These sub-tenants did not comply with these notices, but quitted and delivered up possession of the premises to their immediate landlord, who in turn surrendered his lease to the appellant, the landlord.

From January, 1893, to March, 1894, the appellant used the place for "pinning" cattle for slaughter, and during these thirteen months no cattle were actually killed on the place; the appellant having slaughtered the "pined" cattle in adjoining premises. During the whole of this period the buildings were in a dilapidated condition and unfit for the actual killing of cattle, though sufficiently suitable for "pinning" them.

Subsequently to March, 1894, the appellant rebuilt the premises, but upon this point the magistrate found that notwithstanding the rebuilding the "place" remained the same within the meaning of the Act, and no question now arose as to this.

Upon this evidence the magistrate decided that, although there had been a continuous use of the place for "pinning" cattle, there had not been during the thirteen months from January, 1893, to March, 1894, a user of the place as a slaughter-house within the meaning of sect. 126 of the Towns Improvement Clauses Act, 1847; he being of opinion that the actual slaughtering of cattle is essential to the user of a place as a slaughter-house. He therefore convicted the appellant, but stated this case.

The question for the opinion of the Court was, whether upon the facts stated the place was or was not "so continued" or "so continued to be used" as a slaughter-house between January, 1893, and March, 1894, within the meaning of sect. 126 of the Towns Improvement Clauses Act, 1847.

*J. Brooke Little* for the appellant.—The magistrate was wrong. A "slaughter-house" did not mean merely the place where cattle were actually killed. "Pining" cattle for slaughter, which meant getting the animals into a fit condition to be killed, was just as much a part of the slaughter as the dressing of them for sale after they had been killed. "Slaughter-house" was defined in the Public Health Act, 1848 (which definition was imported into the Local Government Act, 1858) thus. "The term 'slaughter-house' shall mean and include the buildings

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and places commonly called slaughter-houses . . . any building or place used for slaughtering cattle . . . or animals of any description for sale"; the Public Health Act, 1875, defines it as "including" these places. These definitions showed that "slaughter-house" must mean something more than a slaughtering-house, and this view was borne out by sects. 128-131 of the Towns Improvement Clauses Act, 1847, which gave power to commissioners to make bye-laws to prevent cruelty in slaughter-houses, and also power to inspect cattle and carcasses in slaughter-houses, which must mean a power to inspect any part of the slaughter-house premises—"pinning" house, killing-house, or dressing-house. If this view was correct, it was clear that there was no break in the user of this place as a "slaughter-house."

*Alexander Macmorran*, for the respondent, relied upon the plain words of sect. 126. Whether the place had been continued as a slaughter-house was really a question of fact; and, as the magistrate had found that fact in the respondent's favour, the Court could not go behind the finding. If the appellant's contention was right, a shed used at one end of the town for keeping cattle for a short time before they were removed to a place at the other end of the town to be killed might be called a "slaughter-house." That could not be contemplated. The sections of the Towns Improvement Clauses Act, 1847, as to inspection, &c., applies to slaughter-houses in the strict sense.

LAWRANCE, J.—I think the magistrate came to a wrong conclusion. The question is one of law, whether, under the section referred to, the premises of the appellant had been continued to be used as a slaughter-house. That the premises were used as a slaughter-house till Jan., 1893, is not disputed. I suppose there was a place in which the cattle were kept before they were slaughtered, another place where they were actually killed, and a third place where they were dressed for sale. On the adjoining premises there was also a slaughter-house. What happened was this: the appellant's premises had got out of repair, so that they could not be used as a slaughtering-house, but they could be used for one of the purposes in connection with the slaughtering, namely, keeping the cattle there for a time without food preparatory to their slaughter; and we are asked whether it can be said, under those circumstances, that the premises were "so used," or "continued to be used," as a slaughter-house. Assume that there was a slaughter-house, and another next door, and after a time one of the tenants took the next premises in addition to his own with the view of carrying on his business on a larger scale, and that he then used his original premises solely for keeping the cattle in before removing them to the second premises to be killed, could it be said that the first premises were not used as a slaughter-house? I think not. I am of opinion, therefore, that in this case the magistrate was wrong in limiting the definition of a slaughter-house to the place where cattle were actually slaughtered. This place where the cattle

were kept for the purpose of being slaughtered was as much a part of the slaughter-house as the place where they were actually killed.

COLLINS, J.—I am of the same opinion. In view of the finding of the magistrate that this place is the same as that in use at the time when the Act was adopted, we begin the discussion by removing the difficulty put by Mr. Macmorran of a cattle shed at one end of the town, and the place where the cattle were actually killed at the other end of the town. We are dealing with one place which was used for some of the purposes incidental to the slaughter. Then comes the difficulty of the magistrate. There was a period of some months during which no actual slaughter took place in the *locus in quo*, and the question is whether the place ceased in point of law to be a slaughter-house. It seems to us that the view adopted by the magistrate is too narrow a construction of the Act. When the sections are looked at it is obvious that their purpose would be defeated if their definition were limited to the actual slaughtering-place. Special provisions are made in the interests of public health, &c., in connection with matters incidental to slaughter as well as the actual slaughter of cattle. Sect. 128 of the Towns Improvement Clauses Act, 1847, provides for the prevention of cruelty in slaughter-houses, and for the supply of water, and I suppose it is not the practice to supply water to cattle in the very place where they are slaughtered. It contemplates something incidental to the slaughter. Sect. 130 also points to something more than the mere fact of killing cattle. There is also sect. 131, by which inspectors are empowered to inspect such place, and if we were to take out of the legislation that part of the premises which is used for the preparation of cattle for slaughter we would be cutting out very useful provisions in the Act regulating their use. It would be impossible for inspectors to come in and deal with cattle just about to be slaughtered; if the respondent's contention is right these provisions would be rendered quite nugatory. In the circumstances here I am of opinion that the fact that the owner did not actually slaughter cattle in the place in question does not take the case out of the definition of a "slaughter-house." The question asked must therefore be answered in the affirmative.

*Appeal allowed.*

Solicitors for the appellant, *Steadman and Co.*, agents for *Arnold M. Wilson*, Sheffield.

Solicitors for the respondent, *Smith and Sons*, agents for *H. Bramley*, Town Clerk, Sheffield.

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LITTLEJOHN.

1896.

Slaughter-  
houses—  
Premises used  
as such—Dis-  
continuance  
of slaughtering—"So  
continued to  
be used"—  
10 & 11 Vict.  
c. 34, s. 126;  
21 & 22 Vict.  
c. 98.



## QUEEN'S BENCH DIVISION.

*Monday, Feb. 10, 1896.*

(Before LINDLEY and KAY, L.JJ.)

HANKS v. BRIDGMAN. (a)

*Tramways—Destruction of ticket—Failure to produce to inspector—Refusal to pay fare again—Bye-laws—Reasonableness.**A bye-law made by a tramway company requiring passengers to deliver up their tickets to an inspector of the company on demand or pay their fare over again is reasonable and good; and the fact that the passenger's failure to deliver up his ticket on demand is not wilful, but due to his having inadvertently lost or destroyed it, does not relieve him from the obligation to pay his fare again.**Heap v Day (51 J. P. 213) considered and approved.*

CASE stated by a metropolitan police magistrate.

The respondent, Bridgman, was a passenger on one of the tramcars of the North Metropolitan Tramway Company. He paid his fare to the conductor and duly received a ticket, which, however, he inadvertently destroyed. The appellant, who was an inspector in the service of the tramway company, entered the car by which the respondent was travelling to inspect tickets; he asked the respondent to produce his ticket, whereupon the latter explained that he had accidentally destroyed it. The appellant then stated to the respondent that if he could not produce the ticket he would have to pay the fare again for the distance travelled in accordance with the company's bye-laws. This the respondent declined to do.

The respondent was then summoned for having committed a breach of clause 10 of the tramway company's bye-laws which had been duly sanctioned by the Board of Trade, and a copy of which was affixed to the car by which the respondent had travelled :

Each person shall show his ticket (if any), when required so to do, to the conductor or any duly authorised servant of the company, and shall also, when required so to do, either deliver up his ticket or pay the fare legally demandable for the distance travelled over by such passenger.

## Clause 23 :

Any person offending against or committing a breach of any of these bye-laws or regulations shall be liable to a penalty not exceeding forty shillings.

(a) Reported by J. A. STRAHAN, Esq., Barrister-at-Law.

The magistrate found as facts that the respondent had inadvertently destroyed the ticket he had received from the conductor, and that he had no intention to defraud the company; and he held that clause 10 of the company's bye-laws applied only to facts similar to those in *Heap v. Day* (51 J. P. 213), where the default in complying with the request to deliver up the ticket was wilful; he therefore dismissed the summons, but stated this case for the opinion of the Court.

*C. W. Mathews* and *C. F. Gill* for the appellant.—The magistrate was wrong. The point was really decided in *Heap v. Day* (*ubi sup.*), where a person was held to have committed a breach of a bye-law, identical in language with that in this case, who had a ticket and showed it, but refused to deliver it up when requested to do so before he came to the end of his journey. There need be no intention to defraud the company. A passenger must do one or other of two things—(1) deliver up his ticket when requested to do so by the company's official, or (2) pay the fare. [LINDLEY, L.J.—Can he be asked to pay the fare a second time?] Yes, if he cannot deliver up his ticket. [LINDLEY, L.J.—Suppose he has his pocket picked of his purse and ticket?] That is his misfortune, but it is no answer to the bye-law. Inadvertence is no answer. The bye-law is good and reasonable, and is, of course, intended as a check on the company's servants.

No one appeared for the respondent.

LINDLEY, L.J.—This appeal must be allowed. The bye-law in question is not perhaps very happily worded, but I think it would be destroying its value altogether if a passenger, under circumstances such as occurred here, could not be called upon to pay his fare again. The respondent had inadvertently destroyed his ticket. The case does not find whether he had with him the fare demanded by the inspector, and how the bye-law would work if a passenger had his pocket picked of his money and ticket, I should not like to say. If, moreover, a passenger has given up his ticket to an inspector, he cannot be expected to give it up again. The present respondent lost his ticket, and refused to pay the fare demanded. Under the circumstances I think *Heap v. Day* (*ubi sup.*) does apply.

KAY, L.J.—I agree. The bye-law is a good bye-law; it really has the force of an Act of Parliament. The proper thing for the respondent to have done was to say, "I have lost my ticket," and pay the fare again; and if he could afterwards have shown that he really had lost his ticket, he might possibly have been entitled to recover the fare back. Not having paid the fare or delivered up his ticket, he committed an offence against the bye-law.

*Appeal allowed; case remitted to magistrate to convict.*

Solicitor for the appellant, *Hugh C. Godfray*.

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BRIDGMAN.

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Bye-laws—  
Reasonable-  
ness—  
Destruction of  
ticket—  
Failure to  
produce—  
Liability to  
pay fare.

## QUEEN'S BENCH DIVISION.

*Monday, Feb. 10, 1896.*

(Before LINDLEY and KAY, L.JJ.)

HEWITT v. TAYLOR. (a)

*Adulteration of food—Milk — Practice—Analysts' certificate—  
Evidence—Sale of Food and Drugs Act, 1875 (38 & 39 Vict.  
c. 63), s. 21.*

*The effect of the provision of sect. 21 of the Food and Drugs Act, 1875, which enacts that "the production of the certificate of the analyst shall be sufficient evidence of the facts therein stated, unless the defendant shall require that the analyst shall be called as a witness," is to make the certificate where the analyst is not called not conclusive evidence, but merely evidence on which the justices may regard the facts therein stated as proved unless there is other evidence to show that they are erroneous.*

CASE stated by the justice of the borough of Mossley.

The respondent Taylor was summoned, at the instance of the appellant, under sect. 6 of the Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), for having sold on the 26th day of April, 1895, to the prejudice of the purchaser, milk not of the nature, substance, and quality demanded.

The appellant purchased a pint of milk from the respondent for analysis. The milk purchased was divided into three parts, as required by the statute, and one portion was sent for analysis to the analysts of the county of Lancaster, who certified as follows :—

We, the undersigned public analysts for the county of Lancaster, do hereby certify that we received on the 26th day of April, 1895, from P.O. Bridge a sample of new milk for analysis (which was then marked No. 884), and have analysed the same, and declare the result of our analysis to be as follows :—We are of opinion that the said sample contained the parts as under : 2·94 per cent. fat ; 7·98 per cent. other solids ; 10·92 per cent. total solids ; and that upwards of 6 parts of water have been added to every 100 parts of the poorest milk.

Observations.—No change had taken place in the constitution of the sample that would interfere with the analysis. As witness our hands, &c.

The respondent pleaded not guilty, but did not require that the analysts, or either of them, should be called as witnesses. The respondent tendered himself as a witness, and gave evidence. He stated that on the day of the purchase of the sample of milk

(a) Reported by J. A. STRAHAN, Esq., Barrister-at-Law.

by the appellant the milk of two cows was put into the can from which the purchase was made, that there was no water in the can when he began to milk the cows; that he milked them himself, that he added no water afterwards, and that no person but himself had control of the can from the time the milk was put therein to the time of the sale to the appellant. He further stated that one of the two cows referred to had calved on the 9th day of April, 1895, and that for some time subsequent to that date, and prior to the 26th day of April, he noticed that her milk was of poor quality.

The justices considered the whole of the facts, and having regard to the respondent's denial, to the difficulty of determining an exact standard when adulteration by means of added water begins, and to the fact that one of their number formerly owned the cow which the respondent stated gave milk of a poor quality, and knew that that was so, they dismissed the complaint.

The appellant, thinking the determination of the justices erroneous, applied for and obtained this case for the opinion of the Court. The ground alleged being that the respondent having produced no evidence beyond his own to impugn the analysts' certificate, and that, as he had not required that either of the analysts should be called as a witness, the certificate was bound to be accepted as sufficient evidence of the facts therein stated, in accordance with the provisions of sect. 21 of the Sale of Food and Drugs Act, 1875, which provides as follows:

At the hearing of the information in such proceeding the production of the certificate of the analyst shall be sufficient evidence of the facts therein stated, unless the defendant shall require that the analyst shall be called as a witness, and the parts of the articles retained by the person who purchased the articles shall be produced, and the defendant may, if he think fit, tender himself and his wife, to be examined on his behalf, and he or she shall, if he so desire, be examined accordingly.

*W. G. Clay* for the appellant.—The analysts' certificate does not state a matter of opinion, but a matter of fact: (*Harrison v. Richards*, 45 J. P. 552). It must be taken as conclusive, unless the analyst is required by the respondent to give evidence. That was not done here, nor did the evidence of the respondent negative every possible mode in which the milk might have had water added to it.

*F. Newbolt*, for the respondent, was not called upon.

**LINDLEY, L.J.**—The question in this case is a very simple one. It turns upon sect. 21 of the Sale of Food and Drugs Act, 1875. A summons was taken out against the respondent for having sold, to the prejudice of the purchaser, milk not of the nature, substance, and quality demanded, and a certificate from the public analysts was produced which stated that the milk contained upwards of six parts of water to every one hundred parts of the poorest milk. The respondent appeared, and gave evidence which satisfied the magistrates that the water had not been added; they did not find that the water was not there, but that it had not been added. Mr. Clay says they were bound to act

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*Adulteration  
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—Practice—  
Evidence—  
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ness of  
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certificate—  
38 & 39 Vict.  
c. 63, s. 21.*

upon the certificate. There is a little ambiguity about the expression used in the section, "shall be sufficient evidence," but the section does not say the certificate shall be "conclusive evidence." It certainly could not mean to make the certificate conclusive evidence, because, after stating that the certificate shall be sufficient evidence of the facts therein stated, it goes on to say "unless the defendant shall require that the analyst shall be called as a witness." That the respondent did not do. Then the section proceeds: "and the parts of the articles retained by the person who purchased the articles shall be produced, and the defendant may, if he think fit, tender himself and his wife, to be examined on his behalf, and he or she shall, if he so desire, be examined accordingly." The defendant may be examined. For what purpose? To show, of course, that there was a mistake, and that the certificate was inaccurate. If this were not so, there would be no possible object in the last clause of the section. The ambiguity is thus removed. The section means that the justices may act upon the certificate; they must weigh it as evidence, but they are also bound to weigh any evidence offered on the other side and come to a conclusion upon the whole evidence given by both sides. The appeal must be dismissed.

KAY, L.J.—It is quite clear that in this case there was evidence on both sides which could be received, and that the justices were bound to look at the whole of the evidence on both sides. It is said that sect. 21 means that the certificate is conclusive where the analyst is not called. The section says nothing of the sort; it does not use the word "conclusive;" it says the certificate shall be sufficient evidence unless the analyst is called. Here he was not called, therefore it was sufficient evidence. But the rest of the section applies equally, and under it the defendant and his wife may tender themselves as witnesses and be examined. About what? Why, to say that the certificate is inaccurate. The clause can have no other meaning. The respondent was called and gave evidence to show that the certificate was wrong in saying that water had been added. Now the analysts knew nothing as to this fact, but only judged from the condition in which they found the milk. The respondent's evidence was to the effect that the water which the analysts found in the milk must have come from the cow and was not added. Therefore the justices had to weigh the certificate against the respondent's evidence, and come to a conclusion upon a consideration of both. The appeal must be dismissed.

*Appeal dismissed.*

Solicitor for the appellant, *F. C. Hulton*, Preston.

Solicitors for the respondent, *Emmet, Son, and Co.*, agents for *J. W. Fletcher*, Mossley.

## QUEEN'S BENCH DIVISION.

*Monday, Feb. 10, 1896.*

(Before LINDLEY and KAY, L.JJ.)

COOK v. WHITE. (a)

*Adulteration of food—Milk—False warranty—Practice—Time for service of summons—Sale of Food and Drugs Act Amendment Act, 1879 (42 & 43 Vict. c. 30), s. 10.*

*The provision of sect. 10 of the Sale of Food and Drugs Act Amendment Act (42 & 43 Vict. c. 30) requiring in prosecutions under the Act that the summons should be served on the person charged with violating the provisions of the Act within twenty-eight days of the purchase for test purposes of the food or drug where the food or drug is of a perishable nature, applies only when the person so charged is the person from whom the purchase was made. As to others, service within a reasonable time is sufficient.*

CASE stated by a metropolitan police magistrate.

On the 10th day of May, 1895, a summons was issued against C. E. Lilley and C. T. Brown, trading as M. A. Brown and Son, under sect. 6 of the Sale of Food and Drugs Act, 1875, charging them with having on the 28th day of April, 1895, sold to the prejudice of the purchaser milk not of the nature, substance, and quality demanded, the milk containing 7 per cent. of added water.

On the 24th day of May, Lilley and Brown were discharged from the prosecution, having proved to the satisfaction of the Court that they bought the milk in the same state as they sold it, and with a written warranty.

On the same day (the 24th day of May) a summons was issued against the respondent White under sect. 27 of the Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), charging him with having given a false warranty in respect of the said milk to M. A. Brown and Son on or about the 27th day of April, 1895.

Upon the hearing of the summons against White it was proved that the summons was served upon him on the 27th day of May, which was more than twenty-eight days from the date of the purchase of the sample of milk for test purposes, from M. A. Brown and Son, on the 28th day of April; and before any evidence in support of the charge was given it was contended for the



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respondent that the summons had not been duly served, having regard to sect. 10 of the Sale of Food and Drugs Act Amendment Act, 1879 (42 & 43 Vict. c. 30). That section is as follows:—

Sect. 10. In all prosecutions under the principal Act . . . the summons to appear before the magistrates shall be served upon the person charged with violating the provisions of the said Act within a reasonable time, and in the case of a perishable article not exceeding twenty-eight days from the time of the purchase from such person for test purposes of the food or drug, for the sale of which in contravention to the terms of the principal Act the seller is rendered liable to prosecution. . . .

The appellant Cook contended that sect. 10, in so far as it prescribed a period of twenty-eight days, applied only when the person charged was the person from whom the purchase was made for test purposes.

The magistrate was of opinion that, milk being a perishable article, the summons ought to have been served within twenty-eight days from the purchase of the sample of milk for test purposes. He therefore dismissed the summons, but stated this case.

The question for the opinion of the Court was, whether the magistrate's determination was right in point of law.

*Macmorran*, Q.C. for the appellant. — The magistrate was wrong. The twenty-eight days limit applies only to the case of the purchase of a perishable article for test purposes from the person charged. There was no purchase for test purposes from the respondent at all. Proceedings against him were instituted within a reasonable time, and that is sufficient.

No one appeared for the respondent.

LINDLEY, L.J.—The question turns upon the construction of sect. 10 of the Sale of Food and Drugs Act Amendment Act, 1879, and it is only necessary to read it to see what the point is. [His Lordship read the section, and continued:] In this case the summons was against the original vendor of the milk. Sect. 10 requires that the summons shall be served upon the person "charged with violating the provisions of the said Act," that is, in this case, the original vendor. It has to be served within a reasonable time. That has been done. Then the section continues: "in the case of a perishable article not exceeding twenty-eight days from the time of the purchase from such person for test purposes." "Such person" must mean in this case the respondent. Now there was no purchase from the respondent for test purposes, and it is difficult to see how this provision can apply to the present case. It would apply if milk had been bought from the respondent for test purposes, but, as I have already said, there was no such purchase from the respondent, and therefore this section does not and cannot apply. The appeal must be allowed.

KAY, L.J.—I am of the same opinion. In this case there was in the first instance a summons against the retail sellers which was issued within twenty-eight days from the purchase from them of the sample for test purposes. They proved that they

got the milk under a warranty and sold it in the same condition as they bought it. That exonerated them, and consequently the summons against them was dismissed. Then a summons was taken out against the warrantor, the present respondent, for giving a false warranty, but that summons was not served within twenty-eight days, and the question is, whether it ought to have been taken out and served within that limit of time. The construction urged on behalf of the respondent before the magistrate would involve an absurdity, because the warrantor might have sold the milk with the warranty more than twenty-eight days before the sale by the retail dealers, in which case it would have been impossible to take out a summons against the warrantor within twenty-eight days. I do not think that is the meaning of the Act. The section says that, where a summons is taken out against the person from whom a perishable article of food is purchased for test purposes, it must be served within twenty-eight days. If such purchase for test purposes is made from the warrantor, then the summons against him must be taken out and served within twenty-eight days; but, if there is no purchase for test purposes from him, then the summons against him is to be served within a reasonable time. Here the summons was served within a reasonable time. The appeal must therefore be allowed, and the case sent back to the magistrate to hear and determine it.

*Appeal allowed; case remitted to magistrate.*

Solicitor for the appellant, *Stanley H. Hoare.*

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## QUEEN'S BENCH DIVISION.

*Monday, Feb 10, 1896.*

(Before LINDLEY and KAY, L.JJ.)

REG. v. STEWART; *Ex parte* BURNHAM. (a)

*Practice—Summary proceedings — Enforcement of penalties — Limitation of proceedings — Penalties imposed by Act — Recoverable under Summary Jurisdiction Acts—Act enforceable by local authorities—Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57).*

*Where an Act imposes penalties and provides that these penalties may be recovered under the Summary Jurisdiction Acts, any person may take proceedings to recover the penalties unless the right to do so is taken away by express words or by necessary implication.*

*A., the secretary of a certain association, took out a summons against B. for offences against the provisions of the Animals (Transit and General) Order of 1895 made by the Board of Agriculture pursuant to the Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57). On the summons coming on for hearing B. took the preliminary objection that by sects. 2 and 34 the Acts and Orders under it were enforceable by the local authorities only. The magistrate upheld the objection, and refused to hear the case. A. thereupon applied for a mandamus to compel him to hear and determine it.*

*Held, that the proceedings had been properly instituted; and that the magistrate ought to have heard and determined the summons.*

**R**ULE nisi calling upon the Liverpool stipendiary magistrate and one Paterson to show cause why the magistrate should not hear and determine three summonses by Burnham against Paterson.

Burnham was the secretary of the Liverpool branch of the Society for Prevention of Cruelty to Animals, and in that capacity he took out three summonses against Paterson for offences committed against the provisions of the Animals (Transit and General) Order of 1895, made by the Board of Agriculture under the powers given by the Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57).

Before the facts were gone into at the hearing, it was objected that Burnham was not the proper person to prosecute for a contravention of the Order in question, as, by the Diseases of Animals Act, 1894, only local authorities could take proceedings

(a) Reported by J. A. STRAHAN, Esq., Barrister-at-Law.

for enforcing the Act or the Order. The magistrate adopted this view, and declined to hear the summonses, whereupon Burnham obtained this rule, which now came on for hearing.

Sect. 2 of the Diseases of Animals Act, 1894, is as follows :

The local authorities in this Act described shall execute and enforce this Act and every Order of the Board of Agriculture so far as the same are to be executed or enforced by local authorities.

Sect. 84, sub-sect. (1). Where a local authority fail to execute or enforce any of the provisions of this Act, or of an Order of the Board of Agriculture, the Board may by order empower a person therein named to execute and enforce those provisions, or to procure the execution and enforcement thereof.

Sect. 84, sub-sect. (4). The provisions of this section shall be without prejudice to the right or power of the Board, or any other authority or any person, to take any other proceedings for requiring a local authority to execute or enforce any of the provisions of this Act, or of an Order of the Board.

Sects. 51-53 deal with offences against the Act and Order of the Board of Agriculture and impose penalties :

Sect. 54. Any offence against this Act may be prosecuted, and any fine in respect thereof may be recovered, and any money by this Act or an Order of the Board of Agriculture made recoverable summarily may be recovered, and any summary orders under this Act or an Order of the Board may be made in manner provided by the Summary Jurisdiction Acts ; but nothing in this section shall apply to proceedings under the Customs Acts.

Sect. 55. If any person thinks himself aggrieved by the dismissal of a complaint by, or by any determination or adjudication of, a court of summary jurisdiction under this Act, he may appeal therefrom to a court of quarter sessions.

Sect. 57, sub-sect. (5). Notwithstanding anything in any Act relating to the metropolitan police or to municipal corporations or in any other Act, such part not exceeding one-half of every fine or forfeiture recovered under this Act (except in proceedings under the Customs Acts) as the court before which it is recovered thinks fit, shall be paid to the person who proceeds for the same, and the residue thereof shall be applied as if this section had not been enacted.

Sect. 30 of the Animals (Transit and General) Order, 1895, provides that

The provisions of this Order, except where it is otherwise provided, shall be executed and enforced by the local authority.

*A. Oommins* showed cause.—The magistrate was right in declining to hear the summonses, which were not laid in accordance with sect. 30 of the Order of the Board of Agriculture. Sects. 2 and 84 of the Act also make it clear that only local authorities are to enforce the Act, and in view of these provisions no private person can prosecute: (*Reg. v. Oubitt*, 60 L. T. Rep. 638; 22 Q. B. Div. 622; *Reg. v. Lovibond*, 24 L. T. Rep. 357). Secondly, the Court will not grant a *mandamus* where there is a more convenient remedy: (*Reg. v. Wisbech Justices*, 54 J. P. 743; *Reg. v. Smith and others, Lancashire Justices*, L. Rep. 8 Q. B. 146). The applicant could have applied to have a case stated, or he could have appealed to quarter sessions under sect. 55 of the Act.

*D. C. Bartley* in support of the rule. — Under statutes imposing penalties the general rule is that any person may take proceedings to enforce the Acts unless there are provisions taking away this right: (*Caswell v. Morgan*, 28 L. J. 208, M. C.; *Cole v. Coulton*, 2 L. T. Rep. 216; 29 L. J. 125, M. C.; *Back*

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1896.

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v. *Holmes*, 56 L. T. Rep. 713; 16 Cox C. C. 263; 57 L.J. 37, M. C.; *Walker v. Laaxton*, 70 L. T. Rep. 690). These cases are in point here. In the Act in question there is nothing to take away the right of any person to initiate proceedings, and in that respect it differs from the Sea Fisheries Act, 1883, upon which *Reg. v. Cubitt (ubi sup.)* was decided.

LINDLEY, L.J.—It appears to me that having looked at the Act of Parliament and order of the Board of Agriculture, and considering them together, as one must, in order to see their true effect, the conclusion at which I have arrived is that there is nothing sufficiently plain in them to deprive the applicant of the right and power to sue for penalties. I would observe that *Reg. v. Cubitt (ubi sup.)*, which, at first sight, looks an authority the other way, was decided upon an Act of Parliament not framed on the same lines as this. There was nothing in the Sea Fisheries Act, 1883, allowing anyone to sue for penalties. It is of course on the sections of the particular Act that we must found our judgment. Sect. 2, which provides that local authorities as described in the Act shall execute and enforce the Act, and every order of the Board of Agriculture so far as the same are to be executed or enforced by local authorities does not in terms apply to suing for penalties at all; I take sect. 2 to be connected with sect. 34 and the regulations of the Board of Agriculture, and that these sections mean that local authorities are to see that the Act is complied with, but what we really have to find is whether upon the true construction of the penalty clauses their provisions are so clearly cut down that nobody but the borough council can sue for penalties? I can find nothing like that; there is nothing which enables us to come to the conclusion that the sections were intended to deprive anyone of the right to sue for penalties. The result must be to make the rule absolute.

KAY, L.J.—I come to the same conclusion. Where an Act imposes penalties and provides that these penalties may be recovered under the Summary Jurisdiction Acts that *prima facie* means that anybody may take the necessary proceedings for enforcing that part of the Act, and recovering the penalties. That is the ordinary rule—that when you have an Act of this kind which does in terms provide that persons are to be liable for certain Acts or omissions, and that penalties may be recovered under the Summary Jurisdiction Acts in respect of these acts or omissions, we should find something very clear, if not express words, to cut down the general rule. With regard to sect. 2, I must say that it appears to me to have nothing to do with the matter. It merely says that local authorities shall be the persons to enforce the Act so far as they are to be enforced by local authorities. Then sect. 34 has been referred to. [His Lordship read the section and continued:] There is nothing there to indicate that the local authority is to be the only authority to proceed for penalties. The most important sections

to my mind are sect. 51 which imposes the penalties, sect. 52, which deals with offences, and sect. 54. [His Lordship read sect. 54 and continued:] In none of these sections is there anything which says that no one can take proceedings except the borough council. If that section stood alone I think there would be no doubt about the matter, but sect. 57 contains a very clear indication as to the purpose of the Act. [His Lordship read sect. 57, sub-sect. 5, and continued:] That is meant to induce people to take proceedings in order that the Act may be enforced, a provision perfectly familiar. There was nothing similar in the Act upon which *Reg. v. Cubitt* (*ubi sup.*) was decided, and that is sufficient to distinguish that case from this. The cases cited by Mr. Bartley were more applicable than *Reg. v. Cubitt* (*ubi sup.*).

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STEWART;  
*Ex parte*  
BURNHAM.

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57 & 58 Vict.  
c. 57.

LINDLEY, L.J.—I forgot to advert to the second point urged by Mr. Commins, but I do not think there is anything in it. We have a discretion in the matter, and I think *mandamus* was the proper remedy.

*Rule absolute.*

Solicitor for the applicant, *Sidney G. Polhill*.

Solicitors for the respondent Paterson, J. and R. Gole, agents for *Dixon and Syers*, Liverpool.

## QUEEN'S BENCH DIVISION.

*Thursday, Feb. 13, 1896.*

(Before LINDLEY and KAY, L.JJ.)

KYFFIN v. EAST LONDON WATERWORKS COMPANY. (a)

*Practice—Summary proceedings—Recovery of penalties—Institution of proceedings—Constant water supply in metropolis—Who may sue for penalty—Remedy of individual aggrieved—Prepayment of rate—Metropolis Water Act, 1871 (34 & 35 Vict. c. 113), ss. 7, 16, 44, 45—Waterworks Clauses Act, 1847 (10 Vict. c. 17), ss. 43, 44.*

*The duty imposed upon every water company by sect. 7 of the Metropolis Water Act, 1871, to provide throughout their water limits a constant supply of water sufficient for the domestic*

(a) Reported by G. H. GRANT, Esq., Barrister-at-Law.



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ss. 43, 44;  
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*purposes of the inhabitants, is a duty to the district, and therefore the penalty of 200l. imposed by sect. 16 upon any company which violates the provisions of that section can be sued for only by the metropolitan authority. The remedy of an individual who complains against a company for failing to supply him with a sufficient quantity of water for domestic purposes is under sect. 43 of the Waterworks Clauses Act, 1847, which imposes a penalty of 10l. and 40s. a day after notice upon undertakers who neglect or refuse to give such a supply to any owner or occupier "during any part of the time for which the rates for such supply have been paid or tendered."*

*No penalty, therefore, can be recovered by an individual who has not paid or tendered the rate.*

CASE stated by a metropolitan police magistrate.

The appellant, John Benjamin Kyffin, laid an information against the defendant company charging them with unlawfully failing on the 16th and 17th days of July, 1895, at 463 and 465, Hackney-road, in the county of London, to supply him with a sufficient quantity of water for domestic purposes. The information was laid as a breach of sect. 7 of the Metropolis Water Act, 1871, which is as follows :

Subject to the provisions of this Act, every company may, and every company shall, when required so to do in the manner directed by this Act, provide and keep throughout their water limits . . . a constant supply of pure and wholesome water sufficient for the domestic purposes of the inhabitants within such water limits constantly laid on . . . ; and every company shall, subject to the provisions of the special Act as the same are amended by this Act, give and continue to give to such inhabitants a constant supply for domestic purposes in manner aforesaid.

The complainant claimed that the defendant company had incurred the penalty of 200l. imposed by sect. 16 of the Act upon any company "which violates, refuses, or neglects to comply with any of the preceding provisions of this Act."

The learned magistrate dismissed the summons upon a ground now admitted by the respondent company to be erroneous, and not material to this report. The various sections of the Acts of Parliament referred to by learned counsel are set out in the judgments.

*Bousfield*, Q.C., and *Eldridge* for the appellant.—The plaintiff was entitled to sue for this penalty, for he had an interest in the result. The language of sect. 44, which gives all penalties recovered under this Act to the metropolitan authority, implies that it was contemplated that an individual might sue for them. They cited *Cole v. Coulton* (29 L. J. 125, M. C.); *Bradlaugh v. Clarke* (48 L. T. Rep. 681; 8 App. Cas. 354).

*Darling*, Q.C. (*Cripps*, Q.C., and *R. M. Bray* with him) for the respondent company.—An individual cannot recover a penalty under sect. 16 of the Act of 1871. The offence of which the appellant complains—viz., failure of the company to give him a sufficient supply of water for domestic purposes—is an

offence under another Act of Parliament, viz., the Waterworks Clauses Act, 1847, which applies to all water companies. By sect. 43 of that Act a water company is liable to a penalty of 10*l.* for neglecting or refusing to give to any person entitled a sufficient supply "during any part of the time for which the rates for such supply have been paid or tendered." The reason why the appellant did not proceed under that section is because he has not paid or tendered his rate. The Legislature could not have intended that an individual who cannot sue for a penalty of 10*l.* unless he has paid his rate should recover one of 200*l.* for the very same grievance, without having paid any rate at all. By sect. 44 of the Act of 1871 the metropolitan authority alone can sue for penalties under sect. 16.

LINDLEY, L.J.—This is a case stated by one of the metropolitan police magistrates refusing to fine the defendants, the East London Waterworks Company, at the instance of a Mr. Kyffin. The short facts of the case are these: Mr. Kyffin is the occupier of some houses in the Hackney-road, within the district supplied by the defendant company, and he laid an information complaining that the company unlawfully failed to supply a sufficient quantity of water for domestic purposes. I do not wish to criticise the language of the information; but it is ambiguous. It does not say whether the complaint was that the company failed to give a constant supply to the district, or whether the omission complained of was a failure to supply the complainant's own house. However, there it is. Now, the learned magistrate seems to have thought that the informant was not entitled to the penalty he claimed because some notice referred to in sect. 16 of the Act of 1871 had not been given. But it was pointed out in the course of the argument, and it is quite clear, that when you come to look at that section the notice referred to has no reference to the complaint of this gentleman, whichever way it is read. The notice is a notice required to be given by the local authority to continue a constant supply to the district. The decision of the learned magistrate, therefore, proceeded on an erroneous construction of sect. 16, and indeed this was admitted to be so by counsel for the company. The real point of controversy in this case is an extremely important one, namely, whether any inhabitant who considers himself aggrieved is entitled to proceed against the company for the penalties under sect. 16 of the Metropolis Water Act of 1871. Sect. 16 runs thus: "Any company which violates, refuses, or neglects to comply with any of the preceding provisions of this Act shall be liable to a penalty not exceeding 200*l.*"—which is a very heavy penalty—"and to a further penalty not exceeding 100*l.* for every month during which such violation, refusal, or neglect to comply with the said provisions continues after they shall have received notice in writing from the Board of Trade to discontinue such violation, refusal, or neglect as aforesaid." That is the notice to which I referred.

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The appellant's contention is that, notwithstanding sects. 44 and 45, which I am about to read, he is entitled to enforce this heavy penalty. Sect. 44 shows where the penalty is to go, and also, in my opinion, who is to sue for it. "Every penalty incurred by any company by reason of non-compliance with any of the provisions of this Act, shall go and belong to the metropolitan authority within the jurisdiction of which the same has been incurred, and may be sued for and recovered by such metropolitan authority in any court of competent jurisdiction for the recovery of any ordinary simple contract debt of the like amount. . . ." Then comes sect. 45, which says, "Except as is by the next preceding section expressly provided all penalties under this Act may be sued for and recovered in the court of summary jurisdiction." Well, now, evidently penalties incurred by the company do not go to a common informer; they go to the metropolitan authority, and may be recovered in what is called an action. Now, the appellant contends that he is entitled to sue for this penalty, not for his own benefit—he does not claim that—but in order to put the money at the disposition of the metropolitan authority. At first there seemed to be some difficulty in an individual having any remedy whatever. But counsel for the company has referred us to the Waterworks Clauses Act, 1847, and I think it is quite evident that under sect. 43 of that Act any inhabitant who is aggrieved by having an insufficient supply is entitled to proceed against the company for the penalty there referred to. The penalty is a comparatively small one, 10*l.*, and forty shillings to the town commissioners, and another forty shillings "to every person having paid or tendered the rate" for every day during which the neglect continues after notice in writing. Unfortunately for this gentleman he cannot enforce this penalty, for he has not paid his rate, which is a condition precedent. Therefore, the remedy which he has under that Act for any injury sustained by himself he is not in a position to pursue. He contends, however, that he can sue the company for the penalty imposed by sect. 16 of the Act of 1871 by reason of their having, as he alleges, contravened sect. 7 of that Act. Now, that such section of the Act of 1871 refers to something which was quite new at that time, that is, a constant supply of water to districts. That section is as follows: [The learned judge read the section as set out above, and proceeded:] The appellant now desires to sue for the penalty provided by sect. 16 for breach of this section. Now, that is 200*l.*, and it would certainly be curious if a person who cannot sue under sect. 43 of the older Act in respect of injury done to himself personally could sue for that very same injury under sect. 7, and sue for a penalty of 200*l.* It does not seem consistent. It appears to me that there is a distinct principle underlying this Act, and that is, that the duty imposed by the Act in regard to a constant supply to districts is a duty to be enforced by the metropolitan autho-

rity, and they and they alone can sue for the penalties imposed on the company for failure to give a constant supply. That does not in the least deprive any person of his right to complain of a deficient supply to himself personally, and to sue for the penalty imposed on the company for that offence by sect. 43 of the Act of 1847. That appears to me to make the remedies consistent, and also to be in accordance with what I think was the obvious scheme of the Legislature. There is good sense in this, because we know as a matter of fact that this constant supply is a very onerous burden; and there are sections which relieve the company from liability for not giving it if from drought or other accident they are prevented from doing so—all of which matters can be much better considered by the metropolitan authority than by any inhabitant who may think himself aggrieved. I am satisfied that the scheme of the Act is that for which Mr. Darling has contended, and that this appeal must be dismissed. The appellant has an adequate remedy, under sect. 43 of the Act of 1847, and none at all under the Act of 1871. But in this case, if he is suing—as I take it he is—by reason of failure to give a constant supply to the district, he is not the proper person to sue. On the other hand, if his claim is based on the insufficient supply to himself, he is out of court, because he has not prepaid his water rate.

KAY, L.J.—I am of the same opinion. Looking at the Act of 1871 alone, an ingenious argument was propounded in favour of the appellant, which might have been difficult to get over. But when the whole scheme of legislation is looked at the matter is plain enough. By the Act of 1847 an individual who does not get a sufficient supply of water has a remedy given to him in the shape of a penalty which is to go into his own pocket—at least as to 40s. a day; and that remedy can be enforced, we are told, by summary proceedings. But that remedy is subject to a precedent condition, which is a very reasonable one, that he shall have paid his rate. Reading the section shortly, as far as it applies to this case, it is this: if the undertakers shall refuse to furnish any owner or occupier entitled under this Act to receive a supply of water during any part of the time for which the rates have been paid or tendered, they shall be liable to a penalty of 10*l.* and shall forfeit to the town commissioners and to every person having paid or tendered the rate the sum of 40s. for every day of default. In 1871 comes a statute which obliges the undertakers on the requisition of the metropolitan authority—as they now are—to supply water constantly to a particular district—that is, to give a “constant supply,” and if they fail to do that they are liable to a very large penalty, namely, 200*l.* and 100*l.* for every month of default after notice. Then there is a curious provision in sect. 44, that these penalties may be recovered by the metropolitan authority in an action in any Court in which a simple contract debt of the same amount might be recovered. If the amount sought to be recovered could be recovered in the County Court, they

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might go there; if not, they might come to the High Court, or to any Court which had jurisdiction to assist in the recovery of a simple contract debt of that amount. Now that shows the means by which penalties payable by the company under the Act of 1871 are recovered. Then follows a section which says that, except as mentioned in the section just referred to, all penalties under this Act may be sued for and recovered in a Court of summary jurisdiction. At first I thought that the two sections might be reconciled without looking beyond the Act itself. There was, however, a difficulty. But when the Act of 1847 is looked at along with this Act the difficulty vanishes. We then see that, if the appellant's contention is right, the absurd result would follow that an individual complaining of an insufficient supply, who could not under sect. 43 of the Act of 1847 recover a penalty of 10*l.*, or even 40*s.*, unless he had previously paid his water rate, might yet, under sect. 16 of the Act of 1871, recover a penalty of 200*l.* and 100*l.* a month without paying any rate at all. Such a result would be ludicrous, and it is impossible to suppose that the Legislature intended anything of the kind. The meaning of the legislation is clear. An individual who is aggrieved by not getting a sufficient supply may—provided he has paid his rate, not otherwise—proceed under the general Act of 1847 and get a small penalty. Failure to give a constant supply is a matter between the company and the metropolitan authority. The latter make the requisition for a constant supply, and they alone can recover the large penalty for failure of the company to give it. This makes the whole legislation consistent and intelligible, and avoids the gross absurdity which I have mentioned. The result is, although I do not agree with the special reason given by the learned magistrate—which indeed was disavowed at the bar—that the applicant has no right whatever to recover this penalty, and the appeal must be dismissed with costs.

*Appeal dismissed.*

Solicitors for the appellants, *Tiddeman and Enthoven*.

Solicitors for the company, *Kebbell and Miller*.

## QUEEN'S BENCH DIVISION.

*Tuesday, Feb. 11, 1896.*

(Before LINDLEY and KAY, L.JJ.)

PEARSON (app.) v. THE BELGIAN MILLS COMPANY LIMITED  
(resps.). (a)

*Factory—Machinery—Factory and Workshop Act, 1878 (41 & 42  
Vict. c. 16), s. 9.*

*Sect. 9 of the Factory and Workshop Act, 1878, provides that,  
“A child shall not be allowed to clean any part of the machinery  
in a factory while the same is in motion.”*

*Held, that the construction of this section is that, “a child shall  
not be allowed to clean any part of the machinery while the  
machinery is in motion”; and therefore that a child cannot  
clean a fixed part of the machine while the machine itself is in  
motion.*

CASE stated by justices of the peace for the county of  
Lancaster, acting for the division of Oldham.

At a petty sessions held on the 26th day of June, 1895, an  
information and complaint was preferred by James Pearson, an  
inspector of factories (the appellant), against the Belgian Mills  
Company Limited (the respondents), that on the 22nd day of  
May, 1895, at Royton, in the division of Oldham, the respondents  
were then and there the occupiers of a certain factory within the  
meaning of the Factory and Workshop Act, 1878, wherein on  
that day the respondents did then and there, in contravention of  
sect. 9 of the Factory and Workshop Act, 1878, allow a certain  
child to clean a part of the machinery while the same was in  
motion by the aid of steam.

The justices heard and determined the information and  
dismissed the same.

Upon the hearing of the information and complaint the  
following facts were proved or admitted:—

The respondents are cotton spinners and carry on business at  
the Belgian Mill.

The child gave evidence that he was eleven years of age; that  
he was employed at the respondents' mill as a “little piecer”;  
that on the day referred to in the information he was cleaning  
the front part of the roller beam when the appellant spoke to  
him, and that the machine (a spinning mule) was running at the  
time. A roller beam is a fixed part of a spinning mule.

(a) Reported by W. W. ORR, Esq., Barrister-at-Law.



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41 & 42 Vict.  
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In cross-examination by the solicitor for the respondents the child stated that he was using a wire behind the creel to clean, and that he did not think that what he was doing was dangerous; that the piecing is done by the “mindors” and the “big piecers,” and that besides keeping the floors and the fixed machinery clean and tidy there was very little for him to do.

The secretary of the Master Cotton Spinners Association and the president of the Operative Cotton Spinners Association gave evidence that in their opinion this cleaning was not dangerous.

The appellant in his evidence stated that he saw the child in the Belgian Mill on the 22nd day of May cleaning part of the machine while the machine was in motion by steam power.

It was admitted, and the justices found as a fact, that the part of the machine that the child was cleaning was not in motion, but that the machine of which part was being cleaned was in motion. They also found as a fact that the cleaning in question was not dangerous.

Sect. 9 of the Factory and Workshop Act, 1878, provides as follows :

A child shall not be allowed to clean any part of the machinery in a factory while the same is in motion by the aid of steam, water, or other mechanical power;

A young person or woman shall not be allowed to clean such part of the machinery in a factory as is mill gearing while the same is in motion for the purpose of propelling any part of the manufacturing machinery;

A child, young person, or woman shall not be allowed to work between the fixed and traversing part of any self-acting machine while the machine is in motion by the action of steam, water, or other mechanical power;

A child, young person, or woman allowed to clean or to work in contravention of this section shall be deemed to be employed contrary to the provisions of this Act.

By sect. 96, a “child” means a person under fourteen years of age.

On behalf of the appellant it was contended that sect. 9, par. 1, applied to the whole of any machine part of which was in motion.

On behalf of the respondents it was contended that, as the part of the machinery being cleaned was not in motion, sect. 9, par. 1, did not apply.

The justices were of opinion that sect. 9 of the Factory and Workshop Act, 1878, does not prevent the cleaning of a fixed part of a running machine.

The question of law for the opinion of the Court was : Whether sect. 9, par. 1, of the Factory and Workshop Act, 1878, applies to the cleaning by a child of the fixed part of a machine in motion by steam, water, or other mechanical power.

*H. Sutton* for the appellant.—The section says that a child shall not clean “any part of the machinery while the same is in motion.” The word “same” in this section refers grammatically to the last antecedent, namely, “machinery,” and not to the word “part”; so that the section runs “shall not be allowed to clean any part of the machinery while the machinery is in motion.” In this case all that part of the machinery which was

intended to move was in motion, and if the construction placed on the section by the justices be the correct one, then it would bring about the very mischief the Legislature intended to prevent, because the object of the Legislature evidently was to keep children away altogether from machinery in motion. The justices have found as a fact that this employment was not dangerous. It was not admitted that it is not dangerous, but the appellant deliberately refrained from giving evidence to show that it was dangerous, in order to raise this very important question so as to stop school children being put to this work. Whether it is dangerous or not is wholly immaterial, and the appellant had allowed the facts to be stated more against him than he might have done in order to raise the question.

The respondents did not appear.

LINDLEY, L.J.—This question turns upon the true construction of the first paragraph of sect. 9 of the Factory and Workshop Act, 1878. What was done here was this: there was a spinning machine, some portions of which were of course fixed. The child was not cleaning any part of that machine which was in motion; but the whole machine was in motion; that is to say, all the parts which could move were moving, but those parts which were not intended to move were fixed necessarily. The child was employed to clean the fixed parts, not those in motion. The question turns upon the meaning of the word “same” in the section, while the “same” is in motion. The word “same” there clearly to my mind means the machinery, not the particular part; and the section does not merely mean to prevent children cleaning the parts which are in motion, but it means that children shall not clean any part of a machine in a factory while the same—that is, that machinery and not the particular part—is in motion. The magistrates found here that what the child was doing was not dangerous, and that the child was not injured; but it seems obvious that the object of the section is to prevent children being brought near the moving parts of any machinery, which, of course, they must be if they are put to clean the fixed parts of a moving machine. I think the broad sense of the thing is that children are to be kept away from such places, and I think therefore that the case ought to be remitted, as the justices ought to have convicted. We leave them to decide upon the fine.

KAY, L.J.—It seems to me that the grammatical construction of this statute is entirely against what the justices have found. According to the grammatical construction the word “same” in the section means the machinery, not the part which is moving; and when we come to consider what the object of the provision is, that that is the true construction seems to me unquestionable. If a child is employed to clean a part of a machine which never moves while the machinery is in motion, he is exposed to almost as great a danger as he would be if he were touching a part of the machine which was moving. Take, for instance, the bearing

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of a cog-wheel; the axle of a cog-wheel revolves in a bearing. The child may be employed, according to the decision, to clean that bearing because the bearing itself does not move, although the axle and the cog-wheel are in rapid motion. It seems to me that there would be a great danger if he were employed to do a thing of that kind. It is no answer to say that in this particular case the child was not in danger. That is not the question, but the question is what the statute meant, and to my mind the statute plainly means that, while the machine is in motion, that is, while all the movable parts of that machine which should move when the machine is acting are moving, then the child shall not clean any part of that machine—not only shall not clean parts that are in motion, but shall not clean any parts of that machine. Any other construction would be to put a child in the very danger which this section intended to provide against. I am therefore of opinion that this is a case entirely within the mischief contemplated by the Act, and within the very words of the Act.

*Appeal allowed. Case remitted to the justices.*  
Solicitor for the appellant, *The Solicitor to the Treasury.*

## QUEEN'S BENCH DIVISION.

*Feb. 11 and 12, 1896.*

(Before LINDLEY and KAY, L.JJ.)

STRICKLAND v. HAYES. (a)

*Bye-laws — Validity — Good government of county — Obscene language on land adjacent to public place—Annoyance to public—Reasonableness.*

*A county council acting under the powers conferred by sect. 16 of the Local Government Act, 1888, to make bye-laws "for the good rule and government of the county" passed the following bye-law: "No person shall in any street or public place, or on land adjacent thereto, sing or recite any profane or obscene song or ballad, or use any profane or obscene language."*

*Held, that the bye-law was unreasonable and invalid, first, for extending the offence to "land adjacent to" a public place;*

(a) Reported by G. H. GRANT, Esq, Barrister-at-Law.

*secondly, for containing no words importing that the act done must have caused annoyance.* STRICKLAND

HAYES.

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CASE stated by justices of Worcester.

The following facts appeared from the case :—

At a petty sessions held for the petty sessional division of Worcester at the Shirehall, on the 20th day of August, 1895, an information was preferred by the respondent, Alfred Hayes, a police sergeant of the county of Worcester, against the appellant, Henry Strickland, alleging that the said Strickland, on the 2nd day of July, 1895, did unlawfully use certain obscene language in a public place at North Hallow, in the county of Worcester, contrary to the bye-laws of the Worcestershire County Council.

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Language  
used on land  
adjoining  
public place—  
Good govern-  
ment of county  
—Reasonable-  
ness of bye-  
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s. 23; 51 & 52  
Vict. c. 41,  
s. 16.

It was proved on behalf of the informant that the obscene language complained of was used by the appellant on a footpath in a field, and that a large number of persons were present.

In 1894 the Worcestershire County Council, under the powers conferred by sect. 16 of the Local Government Act, 1888, made certain bye-laws expressed to be “for the good rule and government of the county,” and such bye-laws were sent to a Secretary of State for approval, under sect. 23 of the Municipal Corporations Act, 1882, and not disallowed.

No. 3 of such bye-laws, under which the present information was laid, is as follows :

No person shall in any street or public place, or on land adjacent thereto, sing or recite any profane or obscene song or ballad, or use any profane or obscene language.

Bye-law 11 is as follows :

Any person who shall offend against any of the foregoing bye-laws shall be liable on a summary conviction to a penalty not exceeding forty shillings for each such offence.

At the hearing several objections to the validity of the bye-law were raised by the appellant, but for the purposes of this case two only are material, viz. : (1) that the bye-law was unreasonable on the ground that it included land adjacent to a public place ; and (2) that it was unreasonable and repugnant to the general law of the land, inasmuch as it contained an absolute prohibition of profane and obscene language under all circumstances without qualification, and was not limited, as are the offences mentioned in the 28th section of the Towns Police Clauses Act, 1847, to cases where annoyance is caused to the public by such language.

By sect. 16 of the Local Government Act, 1888, a county council shall have the same power of making bye-laws in relation to their county as the council of a borough have of making bye-laws in relation to their borough under sect. 23 of the Municipal Corporations Act, 1882.

By sect. 23, sub-sect. (1), of the Municipal Corporations Act, 1882, the council may from time to time make such bye-laws as to them seem meet for the good rule and government of the

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borough, and for the prevention and suppression of nuisances not already punishable in a summary manner by virtue of any Act in force throughout the borough.

The magistrates decided that the bye-law under which the information was laid was not *ultra vires*, not unreasonable, and not repugnant to the general law of the land, and they convicted and fined the appellant subject to this case.

*Crump*, Q.C. for the appellant.—The bye-law is *ultra vires*, for it is unreasonably wide in its terms; it creates an entirely new offence, and is repugnant to the law of the land. The county council can only make bye-laws in respect of something which is contrary to law, or to prohibit the doing of something so as to annoy or injure the inhabitants or be a nuisance, the latter being the powers conferred by sect. 23 of the Municipal Corporations Act, 1882. In other words, the council can have no greater power to make bye-laws for the county than the borough justices have for urban districts. This bye-law makes it an offence to sing obscene songs or use obscene language in a man's own garden or park, if adjacent to a highway, even though it were impossible for anyone to hear him. Such a bye-law is bad: (*Johnson v. Mayor of Croydon*, 54 L. T. Rep. 295; 16 Q. B. Div. 708; *Everett v. Grapes*, 3 L. T. Rep. 669). In sect. 28 of the Towns Police Clauses Act, 1847, the Legislature has confined the offence of using bad language to cases where it is used in a street, and even then only if it causes annoyance to the public. The council cannot make a bye-law more stringent than that which the Legislature has authorised for towns.

*Channell*, Q.C. (*Brooke Little* with him) for the respondent.—This bye-law is reasonable, and ought to be supported. The word "adjacent" must be construed to mean within hearing. If the obscene language can be heard by others it would be an offence although it were not uttered in a public place: (*Reg. v. Thallman*, 33 L. J. 58, M. C.). If the act done is of such a character in its own nature as to be likely to cause annoyance, it is not necessary to prove annoyance in fact. He cited *Innes v. Newman* (70 L. T. Rep. 689; (1894) 2 Q. B. 292). The use of obscene language is an act of such a character, that it ought to be presumed to be an annoyance to all within hearing of it. Moreover, a bye-law is not inconsistent with the law merely because it forbids something which might lawfully have been done before: per Lord Campbell in *Edmonds v. Company of Watermen* (1 Jur. N. S. 727).

*Crump*, Q.C. in reply.—*Reg. v. Thallman* was a common law nuisance which must cause annoyance to the public. Annoyance cannot be inferred in this bye-law, which makes the mere use of obscene language an offence. The precise offence with which any person is charged must be specified in the bye-law.

LINDLEY, L.J.—In this case the question is whether a bye-law under which the appellant was convicted is valid or not. Several objections were raised against the bye-law, some of which are

untenable. For example, it was said that the sanction of the Local Government Board was required under sect. 184 of the Public Health Act, 1875. That objection is disposed of by the Act under which this bye-law was made, viz., the Municipal Corporations Act, 1882, by sect. 28 of which the consent of a Secretary of State is made sufficient. The really important point, however, was this: This bye-law, it was said, was unreasonable, and not in accordance within the existing law of the land, because it goes too far and constitutes an entirely new offence. That is a formidable objection, for, although we have no sympathy with people who want to sing obscene songs, it is nevertheless important for us to see that any bye-laws made to prevent it do not go beyond the powers given by the Legislature for that purpose. Now, the Act of Parliament, under the authority of which this bye-law was framed, is the Municipal Corporations Act, 1882, sect. 23, and I am unable to find that the county council has any power under that Act to make bye-laws beyond what are required "for the good rule and government" of the county. Bye-laws are not to be made merely to spell out the dislikes of members of the council. They must be really for the better government of the county. Now, I have no hesitation in saying that the bye-law in question goes too far. The words "on land adjacent" to a public place go far beyond what is necessary for the good government of the county. The effect of such a law might be that a "person might be convicted of using bad language in a stable or any other place near a highway" although no person could possibly have heard him. Such a provision might open the door to considerable tyranny, and in my judgment it goes too far. It does not follow, however, that the rest of the bye-law must be bad also. There is plenty of authority to show that a bye-law may be severed, and if one part of it is good, that part may be enforced although the rest may be bad. There is no difficulty in striking out the words "or on land adjacent thereto," and reading the bye-law with those words omitted. But if that is done, one is immediately struck by the fact that there is not a word in the bye-law to imply that the doing of the prohibited thing must be in any way an annoyance to the public. Some such words invariably form part of any similar provisions in Acts of Parliament, as in the Towns Police Clauses Act, 1847, s. 28. That Act shows that the Legislature did not intend to make the singing of an objectionable song in a public place an offence, if it were sung, as it easily might be, in a place where there was not a soul to hear it. It has been suggested that the bye-law implies of necessity that the offence causes annoyance to the public. But I agree with the answer of Mr. Crump, that all that is required for a conviction is to prove that the offence specified in the bye-law has been committed, and that offence is complete under this bye-law, whether any person could hear or not. I think, therefore, that it cannot be supported in its present

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form, although a slight alteration in the wording might put it right.

KAY, L.J.—I confess I should have been glad if this bye-law and conviction could have been supported, because in this case the foolish person who was convicted did in fact use the obscene language in the presence of a large number of people; and if the bye-law had been so worded as to confine its operation to persons behaving like the appellant, I should have said it was a perfectly proper bye-law. But we have to deal with an Act of Parliament which enables the county council to frame bye-laws for the “good rule and government” of the county, and if we were to hold that this bye-law was valid, we should have similar bye-laws made by county councils throughout the country. If we compare this bye-law with the provisions of Acts of Parliament dealing with similar subjects we find that words which are always present in those Acts are omitted in the bye-law. Take, for example, the 28th section of the Towns Police Clauses Act, 1847. The prohibitions in that section are guarded by such words as “to the annoyance of the public.” That Act does not make the utterance of obscene language in streets an offence unless it is done to the annoyance of the public. Can it be right that, rejecting the ordinary form of laws on this subject, a county council should make a bye-law in these wide terms when they have only power to make bye-laws for the better government of the county? It appears to me impossible to avoid the conclusion that it would be an infringement of the bye-law, although no human being heard or could hear what was said. If a man were to give himself up and confess having used such language when alone, that would be sufficient evidence of an infringement of this bye-law. And then, again, when we compare it with Acts of Parliament dealing with streets, we find that the words requiring the condition of annoyance are omitted. Why are they omitted, but because it was intended that the bye-law should be in wider terms than the statute? Mr. Channell has ingeniously argued that the presence of words making annoyance of the essence of the offence ought to be implied in such a bye-law as this. But the fact remains that no such words are to be found in this bye-law, although such words do appear in the Acts of Parliament. Moreover, I think Mr. Crump was right in his contention that the man has a right to insist that the offence of which he is convicted should be clearly stated in the bye-law. There are no words in it making annoyance a condition of the offence, and he has a right to demand that they shall not be implied. I think, therefore, the conviction must be set aside, and I can only express a hope that the council will reframe their bye-law in more careful language.

Solicitor for the appellant, *Tree*, Worcester.

Solicitors for the respondent, *Clarke and Blundell*, for *S. Thorneley*, Worcester.

## QUEEN'S BENCH DIVISION.

*Feb. 12 and 13, 1896.*

(Before LINDLEY and KAY, L.JJ.)

LIDDELL v. LOFTHOUSE. (a)

*Gaming—Using place for purposes of betting—"Place"—16 & 17  
Vict. c. 119, ss. 1, 3.*

*The respondent on three successive days stationed himself at the same spot on an open piece of ground for the purpose of betting on horse-races with any person who chose to bet. The spot occupied by the respondent was a bay like the stall of a stable, formed by a hoarding at the respondent's back, and on either side of him by stays supporting the hoarding.*

*Held, that the respondent was using a "place" for the purpose of betting with persons resorting thereto within the meaning of sect. 3 of the Betting Houses Act, 1853.*

CASE stated by justices. The facts were as follows:—

At the police-court, Stockton-on-Tees, an information was preferred by John Liddell (hereinafter called the appellant), under the stat. 16 & 17 Vict. c. 119, s. 3, against William Henry Lofthouse (the respondent), for that he the said Lofthouse between the 18th and 20th days of June, 1895, at the borough of Stockton-on-Tees aforesaid, then being a person using a certain place situate on the river side in the said borough and known by the name of the "Betting Ground," did unlawfully use the said place for the purpose of betting with persons resorting thereto upon certain events and contingencies of and relating to certain horse-races, contrary to the form of the statute, &c., which information was heard on the 25th day of July, 1895, when the magistrates dismissed the said information.

Upon the hearing the following facts were proved: A plan of the ground in question which is known as "Hubback's Quay" was put in by the appellant and admitted by the respondent. A red cross on the plan was afterwards placed there by the justices to make this case clearer.

Thomas Parden, a sergeant of police, stationed at Seaham Harbour in the county of Durham, went on the 18th day of June, 1895, to the said ground called Hubback's Quay. Hubback's Quay is partly surrounded by a hoarding supported by stays driven into the ground upon or near to the Quay side, Stockton-

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on-Tees. He there saw the respondent, some bookmakers, and a number of persons. The 18th day of June was one of the Ascot Race days. The respondent on the last-named day was frequently at or near to the stay of the hoarding (which is marked with a red cross on the plan) between 12.45 p.m. and 5 p.m. when the afternoon racing was over. The respondent when he was standing beside this stay at times leant against it and used it as a sort of rest for his body. He called out the odds on horse-races, and both received and paid money. On the 19th day of June the respondent offered to lay against a horse called Llanthony. The police officer himself put a shilling on Llanthony for the Ascot Visitors Plate with the respondent, who handed him a betting ticket which was produced. The police officer was present at the same place on 18th, 19th, and 20th days of June, and saw the respondent standing at or near the same spot and making bets on races, and again saw a great number of people, some of whom were moving to and fro upon the piece of land. The police officer did not see the respondent make bets in other parts of the ground, and there was no evidence that he did so. There was no restriction upon anybody entering the ground. There was no charge for admission and no one was in charge. The ownership of the ground was not proved, and it was not alleged by the appellant that the respondent was either the owner or occupier. There was no evidence to show that the alleged place was in any way circumscribed or defined except as shown on the said plan. On behalf of the appellant it was contended that the respondent was using a place for the purpose of betting within the meaning of the Act. The justices, having considered the whole of the facts and the cases, were of opinion that it was very doubtful whether, having regard to the judgments, the respondent was using a place for the purpose of betting with persons resorting thereto within the meaning of the Act and the decided cases, and dismissed the summons.

*Tindal Atkinson*, Q.C. and *Simey* for the appellant.—The justices ought to have convicted the respondent. The decided cases show that he was using a "place" for the purpose of betting within the meaning of sect. 3 of 16 & 17 Vict. c. 119. [LINDLEY, L.J.—Apart from previous decisions the matter seems clear enough.] They cited *Reg. v. Preedy* (17 Cox C. C. 433); *Bows v. Fenwick* (L. Rep. 9 C. P. 339); *Shaw v. Morley* (L. Rep. 3 Ex. 137); *Galloway v. Maries* (45 L. T. Rep. 763; 8 Q. B. Div. 275); *Eastwood v. Miller* (30 L. T. Rep. 716; L. Rep. 9 Q. B. 440); *Haigh v. Sheffield* (31 L. T. Rep. 536; L. Rep. 10 Q. B. 102); *Reg. v. Cooke* (51 L. T. Rep. 21; 13 Q. B. Div. 377); *Snow v. Hill* (52 L. T. Rep. 859; 14 Q. B. Div. 588); *Doggett v. Catterns* (17 C. B. N. S. 669; 19 C. B. N. S. 765).

*Joseph Walton*, Q.C. (*C. W. Mathews* and *Stutfield* with him) for the respondent.—The section requires that the defendant should be using some "place," and a place must be defined, or circumscribed, in some way. The respondent was not using a

defined place, any more than the defendant in *Doggett v. Catterns*. In *Whitehurst v. Fincher* (62 L. T. Rep. 433) a person who made bets on three successive days in the bar of a public-house was held not to have offended against the section.

*Simey* in reply.—Mathew, J., who was one of the judges in *Whitehurst v. Fincher*, explains that case in *Hornsby v. Raggett* (66 L. T. Rep. 21; (1892) 1 Q. B. 20). The Court decided that case on the ground that the defendant was not shown to be making a business of betting.

LINDLEY, L.J.—In this case I think the magistrates ought to have convicted the respondent, and that an offence under the Act of 1853 was committed. When the facts set out in the special case are taken together, it appears plainly that there was a piece of ground known as Hubback's Quay, where there was a hoarding supported by stays and posts driven into the ground, so forming little bays, which were bounded at the back by the hoarding, and at the sides by the stays. One of these bays, which has been marked with a cross on the plan, was the place where the respondent resorted for the purpose of making bets with people. It is found as a fact that the respondent only went to this place for the purpose of making a book on the horse-races, and that he went to this particular place because he knew that there would be a number of people there wanting to back horses. So that we may take it as beyond dispute that the respondent, being a person using a place, though not the owner or occupier of it, used that place for the purpose of betting. That being so, there is an end of the case, unless the place is so ill-defined that we cannot say it is a "place" within the meaning of the Act. Now, this information is based on sect. 3 of the Act, which provides that "any person who, being the owner or occupier of any house, office, room, or other place, or a person using the same," uses the same, i.e., the office or place, for the purpose of betting, shall be liable to a penalty. This section has been frequently the subject of decision by these Courts, and it is now said that, having regard to those decisions, it is impossible for us to say that this was a "place" within the section, although, if the matter had been *res nova*, we might have felt no doubt that it was. But to my mind there are only two cases which seem to stand in the way of our so deciding. The first of these is *Doggett v. Catterns* (17 C. B. N. S. 669; 19 C. B. N. S. 765). When that case comes to be examined, however, it appears that it turned not on sect. 3 of the Act, but on sects. 4 and 5, which deal with the owner or occupier of a place used for betting, and the decision, when understood, seems to be, that the place in question, a space under a tree in Hyde Park, was incapable of occupation. No doubt some of the judgments express a doubt whether it is a "place" at all; but the case is not an authority against our finding this to be a place. The other case is *Whitehurst v. Fincher* (62 L. T. Rep. 433), where it was decided that the bar of a public-house was not a "place" within sect. 3. I

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confess that case does present some difficulty; but that difficulty is largely removed by the remarks made by Mathew, J., who was one of the judges in that case, in *Hornsby v. Raggett* (66 L. T. Rep. 21; (1892) 1 Q. B. 20). The learned judge there says that *Whitehurst v. Fincher* only went the length of deciding that, where a man was proved to have gone three times to a public-house and made bets, that would not be sufficient to enable the Court to conclude that the room was used for the purpose of betting within the meaning of the Act. *Snow v. Hill* (52 L. T. Rep. 859; 14 Q. B. Div. 588) again is no authority for the respondent, because in that case the person charged only walked about in a field making bets, and did not confine himself to any one spot. This Act is directed not against betting, but against professional betters, and we are asked to say whether the respondent in this case was using this place for those purposes against which the Act is directed. In my opinion he unquestionably was. Then it is said that the place was not sufficiently defined to bring the respondent within the Act. I doubt whether that point is really left to us by the case at all. But, if it is, it fails. There are plenty of places which are not definitely defined, which are yet quite capable of being sufficiently identified by description, and that is sufficient for the purposes of this Act. For these reasons I think this appeal must be allowed.

KAY, L.J.—I think the short result of the facts found in this case, and the inferences to be drawn from the facts, is that this man resorted to a particular place to carry on the business of bookmaking. The place is marked on a plan, and is so far defined, that it is like a stall in a stable, confined on three sides and open on the fourth. In that locality this professional bookmaker, on three successive days, carried on the business of making bets with all comers; and the question is, whether he comes within the terms of sect. 3 of the Act as being a person “using a place” for the purposes of betting. If the matter ended there, what could be the difficulty? Here was a person plainly using a place for the very purpose forbidden by the Act. But it is said, in the first place, that the words in sect. 3 are restricted by the preamble, which speaks of the “opening” of betting-houses as the mischief aimed at by the Act. But why was this man not opening a place for the purpose of betting? It appears to me that that is just the very thing which this bookmaker was doing. In the next place, it is said that there are several decisions which show that there was no “place” used by the bookmaker. One of these was *Doggett v. Catterns* (*ubi sup.*), in which it was said that a spot under a tree was held not to be a “place.” That, however, was evidently a decision under sects. 4 and 5 of the Act, which are only applicable to places having an owner or occupier. The terms of sect. 3 are much wider, and aim at any person using a place of which he is neither the owner nor occupier. The case of *Whitehurst v. Fincher* (*ubi sup.*) is certainly nearer to this case than any other cited to us. It does

not appear, however, that in that case the judges thought they had to deal with a professional bookmaker carrying on the business of betting, but rather with a person who was only making bets on the premises as a casual person might do. That makes all the difference. Then it is contended that the place used was not sufficiently defined. I cannot find anything in the Act requiring the place to be defined by boundaries. Rather it appears to me that the indefinite word "place" is used in the Act on purpose to include localities that are not clearly defined. Suppose a man announced that he would be every day at the foot of the statue at Charing Cross, to make bets with anybody who pleased. How could it be said he was not using a place for betting? In this case I have no doubt whatever that the respondent was using a place for the purpose of carrying on the business of a bookmaker, and that he ought to have been convicted under sect. 3.

Solicitors for the appellant, *Eldridge and Sprott*, for *Archer and Parkin*, Stockton-on-Tees.

Solicitors for the respondent, *Iliffe, Henley, and Co.*, for *Barron and Smith*, Darlington.

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## QUEEN'S BENCH DIVISION.

*Friday, Feb. 14, 1896.*

(Before LINDLEY and KAY, L.JJ.)

LOWE v. VOLP. (a)

*Bye-law—Reasonableness—Validity—Tramway company—Passenger required to show ticket if any—Tramway Act, 1870 (33 & 34 Vict. c. 78), s. 46.*

*A tramway company under the powers of sect. 46 of the Tramways Act, 1870, made the following bye-law: "Each passenger shall show his ticket (if any), when required so to do, to the conductor or any duly authorised servant of the company, and shall also, when required so to do, either deliver up his ticket or pay the fare legally demanded for the distance travelled over by such passenger." A further bye-law imposed a penalty for breach of any of the company's bye-laws.*

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ing ticket—  
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*The respondent refused to show his ticket when asked to do so by an inspector of the company, but gave a number which was the number of the ticket which he had received from the conductor of the company. He had duly paid his fare, and had no intention to defraud, and had not in fact defrauded the company.*

*Held, that the bye-law was reasonable and valid, and the respondent ought to be convicted of a breach of it.*

CASE stated by one of the metropolitan police magistrates.

At the hearing the following facts were proved or admitted:

The appellant Ernest Lowe, an inspector of the South London Tramways Company, entered one of the cars of the company in which the respondent P. T. Volp was travelling, and asked the latter to show him his ticket. The respondent refused to show the ticket, but gave the inspector a number which was the number of the ticket which he had received from the conductor. The respondent had duly paid his fare, and in refusing to show his ticket had no intention to defraud, and did not in fact defraud, the appellant company. No alternative demand was made by the company's officials for the fare on non-production of the ticket by the respondent.

The appellants contended that the respondent was liable to a penalty not exceeding 40s. under bye-law 22 of the company's bye-laws for refusing to show his ticket in conformity with bye-law 10.

Bye-law 10 is as follows:

Each passenger shall show his ticket (if any), when required so to do, to the conductor or any duly authorised servant of the company, and shall also, when required so to do, either deliver up his ticket or pay the fare legally demandable for the distance travelled over by such passenger.

The learned magistrate was of opinion that, assuming the bye-law to be valid in law, the reasonable construction of it required it to be read as giving to the respondent the alternative of either showing his ticket or paying the fare, and this alternative was not offered to him. If this construction were wrong, then the bye-law was unreasonable as offering no alternative, and therefore bad. He was further of opinion that the bye-law was invalid, and not authorised by the power to make bye-laws conferred by sect. 46 of the Tramways Act, 1870, in that no power is given by that statute to the company by means of bye-laws to impose penalties upon their passengers for an act which at most would be a breach of contract, and not fraudulent. The learned magistrate therefore dismissed the summons.

*Spokes* (*W. Hume-Williams* with him) for the appellant.—The learned magistrate was wrong in refusing to allow this bye-law. The magistrate referred to *Saunders v. South-Eastern Railway Company* (43 L. T. Rep. 281; 5 Q. B. Div. 456). But Lush, J. expressly says in that case that a requisition to a passenger to show his ticket is perfectly reasonable, and one which may be

enforced by a reasonable penalty. This man refused to show his ticket, although he had one. They cited also *Heap v. Day* (51 J. P. 213).

*F. Watt* for the respondent.—This bye-law is unreasonable, for it gives the passenger no alternative of paying the fare if he fails to show his ticket. Such an alternative is required in the case of railway passengers by the Regulation of Railways Act, 1889 (52 & 53 Vict. c. 57), s. 5, sub-sect. (1). In *Heap v. Day* the money was demanded from the passenger. At any rate an intent to defraud is essential to conviction, and here the magistrate found as a fact that there was no such intent. He cited *Dyson v. London and North-Western Railway Company* (44 L. T. Rep. 609; 7 Q. B. Div. 32); *Haffan v. North Staffordshire Railway Company* (71 L. T. Rep. 517; (1894) 2 Q. B. 822); *Bentham v. Hoyle* (37 L. T. Rep. 753; 3 Q. B. Div. 289); *Saunders v. South-Eastern Railway Company* (*ubi sup.*).

LINDLEY, L.J.—It appears to me that this case is really covered by authority. The learned magistrate has refused to convict the respondent, who was summoned for breach of a bye-law made by the tramway company under the powers of sect. 46 of the Tramways Act, 1870. That section authorises the promoters of any tramway to make regulations for regulating the travelling in or upon any carriage belonging to them; and a later section allows a reasonable penalty to be imposed. The company accordingly made this bye-law: [The learned Judge read the bye-law as set out above and proceeded:] I agree with Mr. Watt that that may be regarded as two bye-laws in one clause. The first part is, that the passenger shall show his ticket (if any) when required; and the second is, that he shall deliver up his ticket when required or pay the fare. Now, this second part has been before the Court on more than one occasion, especially in the case of *Heap v. Day* (*ubi sup.*), and in a case, *Hanks v. Bridgman*, decided in this court a few days ago, in which we followed *Heap v. Day*. Now, the only argument in favour of the respondent which has struck me as being of value is, that a company has no power to impose a duty upon its passengers merely in order to check the honesty of its own servants. But that argument was really disposed of in *Heap v. Day*, and we cannot sitting here overrule that case. Now, the learned magistrate, having found as a fact that Mr. Volp did refuse to show his ticket, gives three reasons for refusing to convict him. He was of opinion, in the first place, that the proper construction of the bye-law required it to be read as giving the respondent the alternative of either showing his ticket or paying the fare, and this alternative was not given to him. With deference to the learned magistrate, I am unable to read the bye-law in any such way. I cannot tack on the alternative “pay the fare legally demandable” to the first clause of it. The words are, “Each passenger shall show his ticket (if any).” The words “if any” are very important. There is no alternative given there. The alternative of paying

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the fare is confined to the second clause of the bye-law, in which the passenger is required to give up his ticket or pay the fare ; but it has nothing to do with the first clause. I think, therefore, the learned magistrate has misconstrued the 10th bye-law. Then his second reason is, that, if the bye-law is not to be construed as giving the passenger the alternative, it is unreasonable and bad. But, again, I do not see anything unreasonable in imposing a small penalty on a man who has a ticket but refuses to show it. The only conceivable reason for so holding is that already alluded to, which was negatived in *Heap v. Day* ; and we have the express opinion of Lush, J., in *Saunders v. The South-Eastern Railway Company* (*ubi sup.*), that such a bye-law would be perfectly reasonable. The learned magistrate's second reason seems to me, therefore, untenable. Then his third ground was, that the company had exceeded their powers under sect. 46 of the Tramways Act, 1870, "in that no power is given by the statute to the company by means of bye-laws to impose penalties upon their passengers for an act which at most would be a breach of contract and not fraudulent." That ground was supported by reference to *Saunders v. South-Eastern Railway Company*, *Haven v. North-Eastern Railway Company*, *Dyson v. London and North-Western Railway Company*, and *Bentham v. Hoyle*. But looking at these cases, we see that in every one of them the statute dealt with precisely the same case as the bye-law, and the bye-law omitted words in the statute which were necessary for the protection of the subject. But sect. 51 (the penalty clause) of the Tramways Act has no such language, and we have the authority of *Heap v. Day* that at all events the second part of this bye-law is reasonable for regulating the traffic in or upon the tramway. On all these grounds I think the learned magistrate was mistaken, and the appeal must be allowed.

KAY, L.J.—I am of the same opinion. I cannot agree with the construction put upon the bye-law by the learned magistrate. It appears to me obvious that the alternative of paying the fare legally demandable applies only to the second part of the bye-law, and cannot apply to that part which deals with the passenger showing his ticket. Now, it is contended that that is an unreasonable bye-law. In *Heap v. Day* it has been held to be a good bye-law as regards the second part of it. But no doubt the first part was not specially considered in that case, and therefore it is open to Mr. Watt for argument. Now, the matter arises thus : Sect. 51 of the Tramways Act provides for a penalty on any passenger who wilfully attempts to avoid paying his fare, or wilfully refuses to leave the car at the end of the journey for which he has paid. Then sect. 46 gives the promoters of any tramway power—subject to this Act—to make regulations for regulating the traffic, and bye-laws for enforcing the same. I agree that if this bye-law were to the effect that if a passenger did not pay his fare he should be liable to a penalty, and omitted the words in the statute which show that the penalty was only imposed by

statute on a person who wilfully omitted to pay, that would be creating a new offence and imposing a penalty in circumstances where the statute plainly did not intend there should be one. But is that the purpose of this bye-law? I do not think it is at all. This is strictly a bye-law made—to take the words of the statute—“for regulating the travelling in or upon any carriage of the company.” Now, a passenger when he pays his fare gets a ticket from the conductor. The company can certainly make a bye-law to compel the conductor to give a ticket, and he does give one. Then an inspector may call upon a passenger to show his ticket, and the bye-law says he shall show it, “if any” when required so to do, to the conductor or any duly authorised servant of the company. It is well known that companies have a check upon their servants by employing inspectors to ask passengers to show their tickets. This bye-law no doubt was made for that purpose. Or the conductor himself may forget if he has given a passenger a ticket, and may wish to see it. But the passenger is only obliged to show it “if any,” which means, of course, if he has one to show. He may have lost his ticket, and in that case could not show it. But why is this bye-law unreasonable? It does not in the least carry any further the right of the company to proceed against a passenger for not paying his fare. It is a bye-law to regulate the traffic, and I should think to give the company a check upon the conductor, and the passenger ought to be liable for breaking it. But then it is said everything ought to be presumed in favour of a person charged with a criminal offence, and it should be inferred that the man had lost his ticket. I cannot agree to that. The language of the case is entirely against it. If he had lost his ticket he would have said so. The case expressly finds that he refused to show it. I can only judge that he wanted to test the question whether he was obliged to show his ticket. In my opinion he is obliged. I think this is a perfectly reasonable bye-law. It does not infringe the statute or extend the law as to the payment of fares beyond sect. 51. I think the learned magistrate was wrong, and that he ought to have convicted.

Solicitors for the appellant, *Blyth, Dutton, Hartley, and Blyth*.

Solicitor for the respondent, *E. R. Oliver*.

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## QUEEN'S BENCH DIVISION.

*Monday, Jan. 27, 1896.*

(Before HAWKINS and KENNEDY, JJ.)

FORTUNE (app.) v. HANSON (resp.) (a)

*Adulteration of food—Sale of milk—Certificate of analyst—Sufficiency of—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), ss. 6, 18, 21, and Form in Schedule.*

*In a prosecution under sect. 6 of the Sale of Food and Drugs Act, 1875, for selling milk which contained 5 per cent. of added water, the certificate of the analyst, which was put in on behalf of the prosecution, stated that "the sample contained the percentages of foreign ingredients as under, 5 per cent. of added water to the prejudice of the purchaser" :*

*Held, that, as water is a constituent of all milk, it is not sufficient for the certificate to state that a certain percentage of water has been added, but that it ought to state the total percentage of water found in the sample and the constituent parts of the sample, and that the certificate therefore was insufficient and bad, and was rightly rejected as evidence in support of the charge.*

CASE stated by Mr. Horace Smith, metropolitan police magistrate, sitting at Clerkenwell Police-Court.

On the 31st day of May, 1895, the respondent appeared to answer an information made by the appellant, a sanitary inspector, on behalf of the parish of St. Mary, Islington, in the county of London. The offence charged in the information was, that the respondent did sell to the purchaser, and proceed to deliver on the 24th day of April, 1895, to the purchaser a churn of milk in pursuance of a contract for the sale to such purchaser of such milk, the same not being of the nature, substance, and quality of the milk demanded by such purchaser in that it contained 5 per cent. of added water, contrary to the provisions of sect. 6 of the Sale of Food and Drugs Act, 1875, and of sect. 3 of the Sale of Food and Drugs Act Amendment Act, 1879.

The magistrate, on the 25th day of June, dismissed the information,

On the 24th day of April, 1895, the respondent sold to the purchaser a churn of milk. While the milk was being delivered to the purchaser at his shop, the appellant, who is an inspector

(a) Reported by W. W. ORR, Esq., Barrister-at-Law.

of nuisances for the parish of St. Mary, Islington, procured a sample of the milk so in course of delivery, and caused the same to be analysed by the public analyst for the parish.

The public analyst duly delivered his certificate of the result of the analysis of the milk, such certificate being as follows :

I, the undersigned, public analyst for the parish of St. Mary, Islington, do hereby certify that I received on the 25th day of April, 1895, from Mr. Fortune, a sample of milk marked as above for analysis and have analysed the same, and declare the result of my analysis to be as follows: I am of opinion that the said sample contained the percentage of foreign ingredients as under: 5 per cent. of added water to the prejudice of the purchaser.—*Observations*: No change had taken place in the constitution of the article that would interfere with the analysis. This sample was handed to me undivided. I divided it into two parts, one of which parts I returned to the purchaser.

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At the hearing before the magistrate this certificate was put in as evidence of the offence charged, but it was objected on behalf of the respondent that the certificate was bad and inadmissible as evidence under the Sale of Food and Drugs Act, 1875, on the following ground, namely, that it did not state as the result of the analysis the parts contained in the sample analysed.

In support of the objection it was contended on behalf of the respondent that milk was largely composed of water, and therefore water was not a foreign ingredient, and as the analyst could not sever extraneous from normal water even if the former had been added, but based his conclusion as to whether water had been added or not on the relative proportions of the constituent parts of the article, and as there was no fixed standard of the composition of milk and analysts differed as to such composition, it was important that the certifying analyst should state in his certificate the exact quantities of water and other constituent parts found in the sample and his deductions therefrom, and that a defendant would then determine whether it would be advisable for him to challenge the conclusion of the analyst by requiring such analyst to attend to be cross-examined, or to appeal to the chemical officers of Somerset House under sect. 22 of the Sale of Food and Drugs Act, 1875, or to proceed otherwise.

On behalf of the appellant it was contended that the certificate was valid; that it was at the option of the analyst to state simply the percentages of foreign ingredients in any sample, and that added water in milk was a foreign ingredient.

The magistrate rejected the certificate and dismissed the information.

The question now was whether upon the facts above stated the rejection of the certificate was right in point of law.

The Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), provides :

Sect. 6. No person shall sell to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser under a penalty not exceeding twenty pounds, &c.

Sect. 13. Any medical officer of health, inspector of nuisances . . . may procure any sample of food or drugs, and if he suspect the same to have been sold to



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him contrary to any provision of this Act, shall cause the same to be analysed by the analyst of the district or place for which he acts . . . and such analyst shall . . . analyse the same and give a certificate to such officer, wherein he shall specify the result of the analysis.

Sect. 18. The certificate of the analysis shall be in the form set forth in the schedule hereto, or to the like effect.

Sect. 20. When the analyst having analysed any article shall have given his certificate of the result, from which it may appear that an offence against some one of the provisions of this Act has been committed, the person causing the analysis to be made may take proceedings for the recovery of the penalty herein imposed for such offence, before any justices in petty sessions, &c.

Sect. 21. At the hearing of the information in such proceeding the production of the certificate of the analyst shall be sufficient evidence of the facts therein stated, unless the defendant shall require that the analyst shall be called as a witness, &c.

Then the form of the certificate as given in the schedule is this :

I, the undersigned, public analyst for the , do hereby certify that I received on the day of , 18 , from , a sample of for analysis (which then weighed ), and have analysed the same, and declare the result of my analysis to be as follows: "I am of opinion that the sample is a sample of genuine . . ." Or, "I am of opinion that the said sample contained the parts as under, or the percentages of foreign ingredients as under: . . .—Observations: ."

*Macmorran* for the appellant.—The certificate in this case was sufficient to satisfy the requirements of the Act, and the magistrate was wrong in rejecting it. The section in the Act of 1875, which deals with the form of the certificate is sect. 18, which says that the certificate must be in the form in the schedule. The certificate given in this case follows precisely the words of the form in the schedule down to and including the words, "I am of opinion that the sample contained the percentages of foreign ingredients as under," and therefore I submit it is sufficient. Sect. 13 says that in the certificate the analyst shall specify "the result of the analysis." This certificate satisfies that condition, as it specifies the result of the analysis. It is said that the certificate is improper, because, in the first place, it does not set out the details of the added water, and in the next place the analyst has added observations of his own at the end of the certificate. As to the first objection, though water is not a foreign ingredient in milk, yet added water is and necessarily must be a foreign ingredient, and therefore he has "stated the percentages of the foreign ingredients" in the substance analysed, which is sufficient to satisfy the form in the schedule. The certificate need only state the result of the analysis as this has done: (*Bakewell v. Davis*, 69 L. T. Rep. 832; (1894) 1 Q. B. 296). With regard to the observations at the end of the certificate, if the words ought not to be there they are colourless, and do not vitiate the certificate: (*Bakewell v. Davis (ubi sup.)*).

*Morton Smith* for the respondent.—The case is really concluded by authority as to the form of this certificate. *Bakewell v. Davis (ubi sup.)* decides that if it be a case of abstraction it is not necessary to set out the constituent parts; but if it be a case of adulteration it is necessary to set them out. The form

of the certificate in *Bakewell v. Davis* (*ubi sup.*) is given in full in 69 L. T. Rep. p. 832, and by it we see that that was a case of abstraction. The present is a case of adulteration and not abstraction. Water is a constituent of all milk, and the amount of water in milk may vary very largely without any water being added. The quantity of it in milk may depend upon many things, as the quality of the cows, the pastures they graze upon or the food they eat. There is no fixed standard of water in milk, and opinions may and do differ widely as to the percentage of water there may be in milk without any adulteration. That being so, the analyst ought to have stated in the certificate the proportion of water mixed with the milk, as in the case of *Newby v. Sims* (70 L. T. Rep. 105; (1894) 1 Q. B. 478). That was a case of water added to rum, and it was decided that the certificate ought to have stated the proportion of water mixed with the rum. It is necessary here that the component parts should be set out, as the most important point is to know the basis on which the analyst has worked. That is precisely what this certificate has omitted to state; and the cases of *Bakewell v. Davis* (*ubi sup.*) and *Newby v. Sims* (*ubi sup.*) are authorities to show that in such a case as the present the constituent parts of the article analysed must be set out in the certificate.

*Macmorran* in reply.—It is quite true that there is no absolute standard of the purity of milk, but that is a matter for the analyst. "Added water" is water which the analyst says has been added to the milk, and that must be a foreign ingredient, though water itself may not be. The form in the schedule allows the analyst to use that form, and says that there is so much added water as a foreign ingredient. Moreover, if the respondent were not satisfied with the certificate he could, under sect. 21, have required the analyst himself to be called as a witness, and that would have got rid of the effect of the certificate altogether. The certificate is not necessarily conclusive evidence against the defendant in these prosecutions; it is *prima facie* evidence only, and the defendant can get rid of it by calling the analyst, though the prosecutor cannot call the analyst and make his evidence part of the case for the prosecution. All that *Newby v. Sims* (*ubi sup.*) decided was that the certificate there did not follow the form at all. He also referred to *Harrison v. Richards* (45 J. P. 552).

HAWKINS, J.—I am of opinion that the magistrate's decision in this case cannot be reversed. [His Lordship having read the sections above set out, proceeded:] We thus see that under sect. 21 the certificate is sufficient evidence of the facts therein stated unless the defendant requires the analyst to be called. When the case came before the magistrate the certificate was put in on behalf of the prosecutor as evidence in support of the charge, and the objection was then taken on behalf of the respondent that the certificate was insufficient and bad under the Sale of Food and Drugs Act, on the ground that it did not state as

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the result of the analysis the parts contained in the sample analysed. It seems to me that the certificate was not sufficient for the purposes for which it was given, and that it does not comply with the Act. It is admitted that there is a certain percentage of water in all milk, as water is one of the constituents of milk. I think that what the Legislature meant was, that the certificate must state such facts as would enable the justices themselves to come to a conclusion whether the article in question had or had not been adulterated. There can be no doubt at all that if upon analysis there was a material substance found in the article analysed which is not a constituent of the article, and which ought not to be found in it, then in that case it would be quite sufficient if the certificate stated that there was such a percentage of a foreign ingredient in the article; but when we come to deal with the question whether the milk in this case contained 5 per cent. of added water, the question becomes more difficult, as water is to be found in milk in its purest state. I think, having regard to the fact that the quantity of water in milk varies very much, the magistrates are entitled to have in the certificate a statement as to what were the parts of which the sample was composed. To say merely that there was 5 per cent. of added water to the prejudice of the purchaser is not sufficient; that is merely to state the analyst's own opinion that water has been added. The magistrates have to exercise their own judgment in the matter, and they may adopt one standard, and the analyst may adopt another. The magistrates ought to see by the certificate what was the total percentage of water found in the sample. I think the certificate here was not in accordance with the substantial requirements of the Act, as it is not sufficient for the analyst to say, as he has done here, that 5 per cent. of water has been added. I think he ought to have given the total percentage of water found in the sample, and without that he is not giving the information which the magistrate is entitled to have. I think, therefore, the magistrate was quite right in his decision.

KENNEDY, J.—I am of the same opinion. There is great power given by the Act to the certificate, and without saying what is, and what is not, a foreign ingredient within the meaning of the Act of 1875, I think the certificate, to be a good certificate, must give substantially facts on which a magistrate could act without further evidence; that is, it must present an analysis sufficient to show that the Act has been infringed, and in what respect it has been infringed. Could anyone say, without knowing the percentage of water which ought naturally to be in milk, that a person ought to be convicted upon a certificate of an analyst which says that there was 5 per cent. more water than there ought to be? I think it is wrong to convict upon such a statement as that. It is a mere statement of fact without any statement of the evidence on which that fact is founded. It is not sufficient for the analyst to say, "I come to the conclusion that

this sample is or is not genuine, because it contains so much added water." Certainly the Act seems to me to have intended much more than that. It intended that the analyst should give the materials on which the magistrates may be able to act, and which would enable the person charged to understand, and, if possible, meet the charge. Some cases have been cited, but neither of the two cases seems to absolutely govern this case; but the principle upon which *Newby v. Sims* (*ubi sup.*) was decided, seems to me to be the principle on which I ought to act here, and I apply that principle to the case. That principle is that the certificate must be a real and true certificate of the result of the analysis, giving the facts which are the results of that analysis. Here the certificate merely states the fact that so much percentage of water has been added, without stating that there is any fixed standard of the composition of milk. I am not going to say, and it is not necessary to say, what a foreign ingredient may be within the meaning of the Act, and it is quite unnecessary to decide whether a foreign ingredient must be something which is not ordinarily found as a constituent of the article analysed. But the form in the schedule clearly shows that there should be a difference in the certificate in a case where the substance is one that ought to enter into the composition of the particular article analysed, and where it is one that forms no part of that composition. For example, if there were 5 per cent. added of something which could not be there naturally, no one could doubt that that would be a case of adulteration; but where you have got a material which may be there as a constituent of the article analysed, then the analyst has to state for the guidance of the magistrates, the facts on which he has based his conclusion. I think the magistrate in this case was quite right, and that this appeal must be dismissed.

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*Appeal dismissed.*

Solicitor for the appellant, *Stanley Hoare*.

Solicitor for the respondent, *W. T. Ricketts*.

## QUEEN'S BENCH DIVISION.

*Saturday, Feb. 22, 1896.*

(Before DAY, WILLS, and WRIGHT, JJ.)

PLETTS (app.) v. BEATTIE (resp.). (a)

*Off licence—Sale of beer—Order by post-card—Appropriation at brewery—Where sale takes place—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 3.*

*When an order for beer is sent to the holder of a licence to sell beer to be consumed off the premises, by means of a post-card directed to the licensed premises, the contract of sale is made at the licensed premises; and when the order assents to an appropriation at the licensed premises of the beer so ordered, and such appropriation takes place there, the subsequent delivery by the holder of the licence of the beer ordered, and receipt by him of its price at the house of the customer, will not be a breach of sect. 3 of the Licensing Act, 1872 (35 & 36 Vict. c. 94.)*

*Pletts v. Campbell (18 Cox C. C. 178; 73 L. T. Rep. 344; (1895) 2 Q. B. 229) distinguished.*

**T**HIS was an appeal by case stated from a conviction of the appellant Jonathan Pletts, on a charge, under sect. 3 of the Licensing Act, 1872 (35 & 36 Vict. c. 94), of selling intoxicating liquor at a house, No. 44, Higher Antley-street, Accrington, where he was not authorised by his licence to sell the same.

The appellant was a brewer, carrying on his business at Burnley. In connection with his brewing business he held a licence under 11 Geo. 4 & 1 Will. 4, c. 64, and the Acts amending the same, for the sale of beer by retail, at 11, Stanley-street, Burnley, such beer to be consumed off the premises.

On the 21st day of June, 1895, a traveller of the appellant's, called Ramsbottom, came to one Nelson, a customer of the appellant's, who lived at 44, Higher Antley-street, Accrington, for the purpose of obtaining orders for beer. Ramsbottom, however, did not take any orders verbally at the customers' doors. He carried with him stamped post-cards, on the back of which were printed the appellant's name and address, and on the other side a list of beer sold by him, and the conditions under which orders were to be given. Ramsbottom on the present occasion drew Nelson's attention to these post-cards, and the conditions referred

(a) Reported by J. A. STRAHAN, Esq., Barrister-at-Law.

to on them, and informed him that before an order could be executed it was necessary for the order to be entered upon one of these post-cards, to be signed by the person giving the order, and to be posted to the brewery. He further informed Nelson that, if on receipt of the card the appellant accepted the order, beer would be appropriated to the order at the brewery, and after such appropriation the customer should have to accept it. Nelson agreed to these terms, and gave an order for six pints of dinner ale. Ramsbottom thereupon filled in opposite the words "dinner ale" on a post-card the words "six pints." The customer signed the card. The order then ran as follows :

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44, Higher Antley-street, Accrington, June 21, 1895.—Dear Sir,—Please supply me weekly as under until further notice.

Then followed the list of beers, and opposite "dinner ale" was written "six pints."

I assent to the appropriation by you to this order at your brewery of goods of the above description, and in a deliverable state.—Yours truly, WALTER O. NELSON.

On the back of the card the printed address ran :

Mr. J. Pletts, 11, Stanley-street, Burnley.

There was no mention of the price of the beer ordered, but Nelson was aware of it owing to previous purchases.

On the order being signed by Nelson, Ramsbottom received the card back from him, and subsequently posted it at Accrington. The order was accepted by the appellant, and six pints of ale were regularly delivered by the appellant's vans each week at Nelson's house. Payment for it was made to the carter delivering it, and from time to time inquiries were made at the house whether there was to be any change in the order. The charge against the appellant was, that in executing the order so given he was committing a breach of sect. 3 of the Licensing Act, 1872, inasmuch as the real sale of the beer took place, not at 11, Stanley-street, Burnley, but at 44, Higher Antley-street, Accrington.

The summons was heard by the magistrates at Accrington, on the 16th day of October, 1895. It then appeared that, on the morning of the day on which the alleged offence took place, Ramsbottom came to 11, Stanley-street with his cart. He put upon his cart the beer which he had to deliver to customers that day. Of this he had a list, which set out the quantities, but not the names of the customers to whom the beer was to be delivered; but the names of such customers were in a book which he carried with him. He put no beer on his cart save what was to be delivered that day. The six bottles intended for Nelson were put in a coop or box along with six similar bottles intended for another customer called Lambert. One of the bottles of each half-dozen had a label fastened to it, bearing the customer's name and address. The other five bottles were in each case unlabelled, and the coop was also unmarked in any



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way. The half-dozen for Lambert were delivered before those for Nelson.

The magistrates on this evidence held that there had been a sale of beer at 44, Higher Antley-street, within *Pletts v. Campbell* (*ante*, p. 178; 73 L. T. Rep. 344; (1895) 2 Q. B. 229), and convicted Pletts.

Pletts appealed.

*Joseph Walton*, Q.C. and *W. Mackenzie* for the appellant.—The sale took place at the brewery at Burnley. The order entered on the post-card at Accrington was only an offer to the appellant to enter into a contract of sale. That offer was accepted at Burnley, and until acceptance there was no contract to sell. Upon appropriation of the goods to Nelson at the brewery the sale was complete, that appropriation being made with the customer's consent. This is sufficient to distinguish this case from *Pletts v. Campbell*.

*Bigham*, Q.C. and *W. B. Ferguson* for the respondent.—The conviction is good on two grounds. In the first place, there was no sale here until delivery of the goods at the customer's house. The governing words of the order are "Please supply." Until the beer was supplied the order was not complied with. In ordinary commercial transactions a delivery under such an order would be a condition precedent to payment. [WILLS, J.—Granting that, may there not be a sale under such an order before delivery? Order for goods in London to be delivered in New York; is not the sale in London?] A sale necessarily creates a debt. Till a debt is created the sale is not complete. Here there could be no debt till delivery. [DAY, J.—There was a conditional debt. When credit is given the debt is similarly conditional.] No; the debt is immediate, though the right to payment is postponed. If the goods here had been destroyed after they left the brewery but before delivery, surely the buyer could not have been sued for the price? In case of credit the destruction of the goods before the time fixed for payment would not prevent the vendor recovering the price. In the second place, there was no effective appropriation at the brewery: (*Taylor v. Jones*, 34 L. T. Rep. 131; 1 C. P. Div. 87.) The question of appropriation is primarily one of fact, and therefore I would only draw attention to the circumstance that only one of the bottles was labelled when the cart left the brewery, and there was nothing that I can see to prevent the brewer altering the labels.

*Joseph Walton*, Q.C., in reply, referred to the dictum of Lord Blackburn, as cited in Benjamin on Sales, p. 320, to the effect that where from the terms of an executory agreement to sell unspecified goods the vendor is to despatch the goods, or do anything to them that cannot be done till the goods are appropriated, he has the right to choose what the goods shall be, and the property is transferred the moment the despatch or other act has commenced. He also referred to sect. 17 of the Sale of Goods

Act, 1893 (56 & 57 Vict. c. 71) as to when the property in the goods passed.

DAY, J.—I am of opinion that the appeal must be allowed. I think both the contract of sale and the appropriation of the goods took place at the brewery.

WILLS, J.—I also think the appeal should be allowed. Sale and delivery are two distinct elements in a contract of sale, and no doubt both must as a rule be satisfied before the vendor is liable for the price. We all know the action for goods sold and delivered, but nobody ever heard of an action for goods sold. Delivering them may be necessary in order to create a debt; but nevertheless there may be a sale without a delivery of the things sold. Such a sale, it seems to me, is sufficient to satisfy the statute in this case. All the law requires is, that the elements which substantially constitute a sale should take place on the licensed premises. Under the appellant's licence the goods so sold must be consumed off the licensed premises. It would be strange to say that it is legal to sell goods to be consumed off the premises, but illegal to deliver them where they are to be consumed. As to appropriation of the goods, I think that, too, took place at the brewery, and I think that is the effect of the finding in the case.

WRIGHT, J. concurred.

Solicitors: for the appellant, *Garret and Jackson*; for the respondent, *L. Kirkman*, agent for *Haworth and Broughton Accrington*.

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—  
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*Licensing Acts*  
—*Off licence*  
—*Sale of beer*  
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*post—Place of*  
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## COURT FOR CROWN CASES RESERVED (IRELAND).

*June 17 and 24, 1895.*

(Before Sir PETER O'BRIEN, Bart., C.J., PALLES, C.B., ANDREWS, O'BRIEN, MURPHY, JOHNSON, HOLMES, GIBSON, and MADDEN, JJ.)

REG. v. HEHIR. (a)

*Larceny—"Felonious taking"—Mistake—Animus furandi.*

*Where a man handed to the prisoner a 10l. note in mistake for a 1l., and the prisoner took the note thinking it was a 1l. note, and when he suddenly discovered the error, kept it:*

*Held (Murphy, Holmes, Gibson, and Madden, JJ. diss.) that he could not be indicted for larceny.*

(a) From the *Irish Law Times Reports*.

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Reg. v. Ashwell (16 Cox O. C. 1; 53 L. T. Rep. N. S. 778; 18 Q. B. Div. 190) not followed.

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CASE reserved by the Right Hon. the Lord Chief Baron, as follows:—

At the Assizes for the Munster Winter Assize County, 1894, held at Cork under the provisions of the Munster Winter Assize County Order, 1864, Denis Hehir was tried before me and a common jury for the larceny of “nine pounds sterling, of the goods and chattels of one John Leech;” but during the course of the trial, upon the application of Mr. Bourke, Q.C., counsel for the Crown, I allowed the indictment to be amended by striking out the words “nine pounds sterling,” and substituting therefore the words “a ten pound note.” A copy of the indictment is contained in the Appendix.

Evidence was given that John Leech, the master of the brigantine *Uzziah*, which was then in Limerick, engaged the prisoner, Denis Hehir, to assist in the discharge of the cargo. On the 20th day of September last Leech owed Hehir for work done in such discharge the sum of 2*l.* 8*s.* 9*d.* For the purpose of paying this sum, Leech, on said 20th day of September handed the prisoner nine shillings in silver and two bank notes, each of which both Leech and the prisoner believed to be a 1*l.* note. One of those notes was in fact a 10*l.* note. The prisoner left taking away the two notes with him. Within twenty minutes afterwards Leech discovered his mistake and went in search of the prisoner, whom he found within half an hour after he had given him the notes. Leech told the prisoner that he had given him a 10*l.* note instead of a 1*l.* The prisoner alleged that he had already changed both the notes. There was evidence that at the time when the prisoner first became aware that the note was for 10*l.* (which was a substantial period after it had been handed to him by Leech) he fraudulently and without colour of right intended to convert the said note to his own use, and to permanently deprive the said John Leech thereof, and that to effectuate such intention the said prisoner shortly afterwards changed the said note and disposed of the proceeds thereof.

Mr. Bourke referred me to *Reg. v. Ashwell* (*ubi sup.*) and *Reg. v. Flowers* (16 Cox C. C. 33; 54 L. T. Rep. 547).

In order to have an authoritative decision upon the question, upon which the Court for Crown Cases Reserved in England was, in *Reg. v. Ashwell*, equally divided, I left the case to the jury, who found the prisoner guilty, and I reserved for this Court the question hereinafter stated. I allowed the prisoner to remain out on bail to come up for sentence at the next assizes for the county of the city of Limerick.

I request the opinion of this Court upon the question, “Whether I ought to have directed a verdict of acquittal by reason of the prisoner not having had the *animus furandi* when Leech handed him the 10*l.* note?”

C. PALLES.

## APPENDIX.—COPY INDIOTMENT.

*Larceny.*

County of the City of Limerick, to wit, Munster Winter Assizes, 1894. —The jurors for our Lady the Queen, upon their oath, present that Denis Hehir, on the 20th day of September, in the year of our Lord 1894, a ten pound note of the goods and chattels of one John Leech, feloniously did steal, take, and carry away, against the form of the statute in such case made and provided, and against the peace of our Lady the Queen, her Crown and dignity.

*G. Fitzgibbon*, for the prisoner, cited Hawkins' Pleas of the Crown, p. 147; Hale's Pleas of the Crown, 407; *Armory v. Delamirie* (1 Strange, 504); *Merry v. Green* (7 M. & W. 623); *Reg. v. Mucklow* (1 Mood. C. C. 160); *Reg. v. Davies* (1 Dearsley, 640); *Reg. v. Middleton* (L. Rep. 2 Cr. Cas. Res. 38, 45); *Holmes' case* (Sir J. Kelyng's Rep. 24, 81); *Reg. v. Thurborn* (1 Dennis C. C. 388); *Reg. v. Preston* (2 Dennis C. C. 353); *Reg. v. Christopher* (Bell's C. C. 27); *Reg. v. Gyde* (L. Rep. 1 C. C. Res. 139); *Cundy v. Lindsay* (3 App. Cas. 549); *Cartwright v. Green* (8 Ves. 405); *Reg. v. Rileys* (1 Dears. C. C. 149).

*M. Burke*, Q.C. (*Moriarty* with him) for the Crown, cited *Reg. v. Ashwell*, *Reg. v. Flowers*, *Reg. v. Moore* (Leigh & Cave Cr. Cas. 1).

*Cur. adv. vult.*

MADDEN, J. said :—I consider the conviction in the present case was good at common law. The law being the same in both countries, the English cases are applicable. We are not, however, absolved by *Reg. v. Ashwell* from the duty of forming an independent judgment. Does the evidence show the taking by Hehir to have been *invito domini*? If the handing of the note by Leech to Hehir amounted to delivery no fraudulent intention would suffice to constitute larceny. There was a fiscal transfer. Men are presumed to know the consequences of their own acts. Does the transfer of physical possession, made under such a mistake, amount to a delivery of legal possession? I think not, if it is accepted under a common mistake. If the owner intends the specific property to pass it is not larceny, but where there is a mistake as to identity it is different. There must be intelligent delivery, and not the mere physical fact from which intelligence is absent. I rest my judgment on the fact that the mistake was not one of value, but of identity; not the paper *per se*, but the money it represents. The case would be plainer if the exchange were carried on, as in some nations, by means of shells or precious stones. A mistake between a 10*l.* note and a 1*l.* note is the same. Any consent given or act done in consequence of such mistake can have no legal value whatever. The case of *Merry v. Green* presents no substantial or essential difference to the present case. It was a case of transfer of physical possession. Delivery was there made in ignorance of the existence of the chattel. In either case the *dominus* remained *invitus*, for the element of intelligent delivery was wanting. Cases of finding do not throw much light on the question. Assuming the *dominus*

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to be *invitus*, was there any felonious taking of the money at all? In *Reg. v. Middleton* the question was as to the effect of knowledge coincident with the taking. The rule which governs this case is simple: it is, "A man to whom a chattel is delivered under a mistake as to its identity, does not thereby obtain legal possession; and if he subsequently learns the mistake and retains its possession, he is guilty of larceny."

GIBSON, J. said:—On the question of consent or non-consent there is no substantial difference between a bank-note and any other chattel. First, as to acquisition. Legal possession imports knowledge. Here there was a physical delivery without knowledge. Until knowledge the law should not attribute to the taker the object of taking without consent. If upon discovery he elects to return the chattel, then it amounts to custody rather than possession; if he appropriates, then either the possession becomes wrongful, or then and there, for the first time, there is a taking out of possession of the owner of the chattel, which previously was lost; he commits a tort. Secondly, as to the lawfulness of the possession. Consent by possession obtained by fraud or force *animus furandi* is unlawful. Physical delivery is evidence of consent, but is rebuttable. Even without *animus furandi* a taker who at delivery is aware of mistake, his possession is not innocent. The taker there is not misled. The question of consent is one of substance, not of form. Delivery under mistake does not work an estoppel. The taker is bound to give up the chattel on demand. The protection given to mistake does not extend to wilful fraud. I express no opinion on the question of bailment; it was not argued. Of seven cases relating to this principle of mistake, only two are against the view I take. The cases on lost property are distinguishable. The bureau cases seem in direct conflict with the post-office cases. Hehir, who is morally a rogue, is legally a thief.

HOLMES, J. said:—All acts to carry legal consequences must be acts of the mind. The prosecutor did not intend to give, or know that he was giving, and Hehir did not intend to receive, or know he was receiving; therefore possession remained in the owner. When the taker discovers that he has a chattel which the owner did not intend to give, he then takes it for the first time, and if he retains it he is guilty of larceny.

MURPHY, J. said:—As to the moral aspect of the defendant's conduct it was clearly just as bad as if he had picked the owner's pocket. But it is said that in consequence of the means he adopted he is not guilty of larceny. The case is governed by *Reg. v. Ashwell*, where fourteen judges were equally divided.

JOHNSON, J. said:—In my opinion Hehir is not guilty, because a man who honestly receives a chattel with consent of the true owner cannot be found guilty of larceny. Larceny by common law is felonious taking, and carrying away from a person. It

must be felonious, and this intent to steal must be when it comes to his hand. There must be an actual taking. Hawkins, in his "Pleas of the Crown," adopts Coke's definition of larceny. We are not here concerned with what the law of dishonesty is; the severity of the ancient criminal law led to the distinction I refer to, but still the principle of law remains to-day the same. Where no trespass is there is no larceny at common law. Here there was no trespass. Leigh gave Hehir two notes, 1*l.* and 10*l.* He intended to give Hehir the property in one of the notes; what difference is there from the giving of the other note at the same time? Hehir had no *animus furandi* when he took the notes and obtained possession of them.

ANDREWS, J. said:—I think the conviction ought to be quashed. I think the property in the note immaterial in this case; no doubt it did not pass to the prisoner. When Leech handed the notes to Hehir he intended to give Hehir possession of the thing he handed. His intention arose from mistake; that does not show that the intention does not exist. In fact, he handed the note to Hehir, knowing that he was handing it to him. A man can take and be in possession of a chattel of which he does not know the value, or believes it to be of a different value or quality from its real value or quality. As regards taking, it is an absolute fiction to say that, although Hehir actually took the note when handed to him, he did not then take it, but only at a subsequent time when he discovered it was something different, and that he then took it, when he really did not take it at all, for he had it for some time in his possession. This is to ignore the actual taking, and make a mere movement of the mind amount to an actual taking. At the time Hehir received possession of the note he got lawful possession of it, and committed no trespass whatever. He took the 10*l.* note innocently and with the consent of the owner, not fraudulently; therefore he is not guilty of larceny. In *Reg. v. Ashwell* the conviction was not affirmed, but stood merely because it was not quashed. It is for the Legislature to make this transaction larceny.

O'BRIEN, J. said—The question of consent did not exist in the owner's mind as to the 10*l.* By his own act he put it into the possession of Hehir. The latter was not guilty of larceny. In order to make him out so, we must hold that he "feloniously took," when in fact he did not take at all. We must invent a new criminal category; he is a "finder-out," by an operation of the mind. The *asportavit* disappears altogether in this case. The corporeal transfer cannot be left out in the idea of larceny. What was the position of Hehir between the taking of the article and the discovery of the mistake by him? Excusable detention, I suppose. He is then a party innocent at first, and afterwards guilty. I do not consider that *Reg. v. Ashwell* levels all the previous cases. It was a divided judgment. No crime has been committed in this case, only a moral transgression, as to which the law has not hitherto given effect to the views of

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those who think to compass the sea by undertaking to push the confines of crime into the boundless regions of dishonesty. The conviction should be reversed.

PALLES, C.B. said:—I admit that the act of the prisoner in this case was a dishonest one, but it is punishable not by the judges but by the Legislature. *Reg. v. Mucklow*, *Reg. v. Davies*, and *Reg. v. Middleton* are all against the conviction. *Reg. v. Ashwell* said the two first were overruled. In it the opinion of seven judges was adverse to a conviction in a case like the present. For fifty-eight years there was an unbroken series of decisions that acts similar to that of the prisoner were not larceny. In *Reg. v. Ashwell* a technical rule maintained the conviction. *Cartwright v. Green* and *Merry v. Green*, cited for the Crown, are civil cases. I doubt the right of the Court for Crown Cases Reserved in England to reverse a previous decision of their own Court in a previous case. There is no inconsistency between these two civil cases (neither of which was decided by a Court of equal authority with that of the Court for Crown Cases Reserved) and the criminal cases. In both the bailor and bailee were ignorant of the existence of the chattel. There was no intentional manual delivery of the chattel. There was that knowledge in the present case. *Reg. v. Ashwell* has not a single prior case to support it. It was a case of first impression. The ground upon which it was arrived at is given in the judgment of Coleridge, C.J., in whose mind there must have been some serious misapprehension. I hold that it would not be competent to the Court in England to uphold the conviction in *Reg. v. Ashwell*, and it is only by following that case that it can be upheld in the present case. As regards written contracts, see *Scott v. Littledale* (8 E. & B. 815). In written instruments the intention must be gathered from the writing. Why should a man not be held to intend that which is the consequence of his act? So long as Hehir believed the note to be for 1l., the prosecutor cannot be heard to say that he had not the intention of parting with it, and till the discovery of the mistake Hehir had lawful possession of it. There is no difference between the case here and that of a person counting notes and giving nine notes instead of ten. Hehir might lawfully detain the 10l. note till he had an opportunity of changing it and giving back 9l. to Leech. Hehir must have had lawful possession antecedent to the discovery of the mistake, and that discovery cannot by relation back change the character of the antecedent possession, which was Hehir's possession, into that of Leech. Hehir was not guilty of larceny at common law.

Sir PETER O'BRIEN, Bart., C.J., in agreeing with the Chief Baron, referred to *Reg. v. Flower*, and said:—The innocent receipt of a chattel and its subsequent appropriation does not constitute larceny. Leech gave unreservedly, Hehir honestly received. The fact of his mistaken belief made Leech give the note without any reservation whatever. *Reg. v. Mucklow* was

recognised in *Reg. v. Davies*, although not argued at the Bar. It was a moot point among the judges. It is not consistent with *Cartwright v. Green*. There was here no felonious taking. However we dislike the law we must follow it.

*The conviction was accordingly quashed.*

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## QUEEN'S BENCH DIVISION.

*Thursday, Feb. 23, 1896.*

(Before LINDLEY and KAY, L.JJ.)

COLLMAN (app.) v. ROBERTS (resp.). (a)

*Shop hours—Young person—Employment partly indoors and partly outdoors—Employment “in or about” shop for more than seventy-four hours in one week—Shop Hours Act, 1892 (55 & 56 Vict. c. 62), s. 3.*

*Sect. 3 of the Shop Hours Act, 1892, provides that no young person shall be employed “in or about a shop for a longer period than seventy-four hours in any one week.*

*Held, that the words “in or about a shop” mean “in or about the business of a shop,” and accordingly that where the duties of a young person employed in a shop are partly indoor and partly outdoor duties, the time occupied in the outdoor duties must be counted as time occupied “in or about the shop” within the meaning of the section*

CASE stated by Mr. Bushby, metropolitan police magistrate, sitting at Worship-street Police-court.

On the 30th day of July, 1895, a certain summons was heard upon complaint made by John Collman (the appellant), on behalf of the London County Council, against James Roberts (the respondent), that the respondent did during the week commencing the 16th day of June and ending the 22nd day of June, 1895, at his premises (being a shop within the meaning of the Shop Hours Act, 1892), in the parish of Shoreditch, in the county of London, unlawfully employ in and about the said shop one Charles Medcraft (being a young person within the meaning

(a) Reported by W. W. ORR, Esq., Barrister-at-Law.

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of the said Act), for a longer period than seventy-four hours, including meal times.

It was proved or admitted,

(1.) That the respondent was a news-agent, and that he occupied the premises for the purpose of receiving and retailing newspapers, and that the premises were a shop within the meaning of the Shop Hours Act, 1892.

(2.) That the respondent employed the boy Medcraft in connection with the receiving and retailing of newspapers, and that Medcraft was a young person within the meaning of the Act, and that in the course of such employment Medcraft fetched newspapers from Fleet-street, and delivered them to customers at their addresses, sold newspapers on behalf of the respondent both inside and outside the shop, and inside the shop folded up newspapers, did up country parcels, swept out the shop, and cleaned the windows.

(3.) That the period of time calculated from the time at which Medcraft arrived at the shop to the hour at which he ceased working for the respondent on each of the seven days from the 16th to the 22nd days of June amounted to eighty-four and a half hours, and that during the whole of such period of eighty-four and a half hours Medcraft was occupied in performing some portion of the above described duties in the course of his employment, or in going to, or returning from, or taking his meals in the times allowed to him for that purpose.

(4.) If the period to be calculated for the purposes of the Act is limited to the times during which Medcraft was at work in or about the premises occupied by the shop, then he was not employed in or about the shop for a longer period than seventy-four hours, including meal times, in that week; but if the period to be calculated for the purposes of the Act is not so limited, but should include the times occupied in fetching newspapers from Fleet-street and delivering them to customers at their addresses not in or about the premises, then Medcraft had been employed for a period of eighty-four and a half hours, including meal times, in that week.

The magistrate adopted the first of these two constructions of the Act, and dismissed the summons.

The question for the opinion of the Court was, whether the decision of the magistrate was right in law.

The Shop Hours Act, 1892 (55 & 56 Vict. c. 62) provides:

Sect. 3.—(1.) No young person shall be employed in or about a shop for a longer period than seventy-four hours, including meal times, in any one week.

Sect. 9. "Shop" means retail and wholesale shops, markets, stalls, and warehouses, in which assistants are employed for hire, and includes licensed public-houses, and refreshment houses of any kind; "young person" means a person under the age of eighteen years.

*H. Avory* for the appellant.—The London County Council was the appellant it being the duty of that council to enforce the provisions of the Shop Hours Act, 1892, so far as the

county of London was concerned. The Act was described as an Act to amend the law relating to the employment of young persons in shops; and then it recited that "whereas the health of many young persons employed in shops and warehouses is seriously injured by reason of the length of the period of employment," be it therefore enacted, &c. By sect. 9 a young person is a person under the age of eighteen years, and by the same section a shop is defined. Sect. 3 was the section applicable to this case, and by that section no young person is to be employed "in or about" a shop for a longer period than seventy-four hours in any one week. The whole question here was what was the meaning of those words "in or about" a shop in section 3. The learned magistrate held that those words must be taken to mean "actually on the premises of the shop," and the question now was whether those words were to be limited to the actual building, a construction which the magistrate adopted as the true view of the section. It was submitted that that was an erroneous and too narrow a view to take of the section. The words "in or about" a shop clearly meant "in or about the business of the shop." The object of the Act was to limit the length of the employment, and to ensure that a young person should not work more than seventy-four hours. "Shop" included licensed houses, and refreshment-houses, so that, if the construction of the magistrate were adopted, a boy might be kept all day running in and out of a refreshment-house without infringing the Act, provided he worked not more than the seventy-four hours in the shop itself, although the total number of hours of his employment far exceeded that limit. The same consideration would apply to a young girl working at a stall, and to many other instances that might be put.

The respondent did not appear.

LINDLEY, L.J.—This case is an important one, and by no means an easy one to decide, because it is impossible to read the Shop Hours Act, 1892, without seeing that the word "shop" throughout the Act is used with reference to a structure or place—a definite place of business, as distinguished from the business carried on there. We have in this case a place which is a shop within the meaning of the Act, and there is a boy employed in the business which is carried on at that place (and I attach great importance to that), but his work is partly indoor work and partly outdoor work, and his outdoor work takes him some distance from the actual place where the shop is situated, and the question is whether, whilst he is employed in doing the outdoor work, he can be said to be employed "in or about the shop" within the meaning of the Act. To answer that question we have to look and see what the object of this Act of Parliament is, and what is the mischief to prevent which it was passed. It was passed for the purpose of protecting the health of young persons employed in shops and warehouses. It recites that their health is in many cases seriously injured by reason of the length of the

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period of employment. Therefore their hours of employment must be limited. The Act does not aim at protecting their health by the improvement of the sanitary condition of the place in which they are employed. Its object is to protect their health by preventing their employment for an undue length of time. If we were to adopt the very narrow construction of this Act, which I must say the words of it warrant, we should be reducing it to a dead letter in all cases in which the duties of young persons employed in shops are partly indoor duties and partly outdoor duties. I cannot think it would be right to put so limited a construction upon the language of the Act as to render it futile in a large number of cases which would be within the mischief to which it appears to me to have been addressed. I think the true construction of the Act is this: that where you find a shop, and a shopboy or a shopgirl, under the age of eighteen, employed by the shopkeeper, that boy or that girl is not to be employed for the purposes of the business carried on at that shop by the shopkeeper, for more than seventy-four hours in the week, including meal times. That is the real substance of it, and although the learned magistrate has here adopted a construction of the Act which is warranted by the words of it, I do not hesitate to say that his construction is calculated to defeat the object of the Act in so great a measure that I do not think it can be the true construction.

KAY, L.J.—I am entirely of the same opinion. I think the question raised in this case is a very important one, and it is one upon which the efficiency of this Act greatly depends. The Act was passed for the purpose of preventing shopkeepers from employing young persons under the age of eighteen, whether boys or girls, for an undue length of time. In this case we have a shopkeeper who keeps a shop within the meaning of the Act, and he has in his service a boy whom he employs in the way described in the case. Now, if you are to deduct the time occupied in his outdoor duties from the time of his employment, he might be kept so employed all day and all night without infringing this Act. If that were so, there might be many similar cases which the Act would fail to reach. For instance, suppose a dressmaker employs young girls under eighteen in her business, and a part of the duty of those young girls is to deliver light goods at the houses of different customers, or to assist in measuring and fitting customers at their own houses, and the girls are employed in that way a considerable part of the day, are not those times to be reckoned as times of employment “in or about the shop”? I cannot think that it would be a true construction, looking to the purpose and object of the Act, to limit it in that way. If it were so, shopkeepers might very easily evade the provisions of the Act, and employ young persons in their business for much more than seventy-four hours in one week. The mischief at which the Act was aimed is the employment of young persons for unduly long hours. The extreme

length of time for the employment of young persons, which is permissible under the Act in any one week, is seventy-four hours including meal times; and employment beyond that length of time is an infringement of the Act, unless the employer can show that it is clearly not within the words of the Act. The learned magistrate has put too narrow a construction upon this very useful and important provision.

*Appeal allowed.*

Solicitor for the appellant, *W. A. Blaxland.*

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## QUEEN'S BENCH DIVISION.

*Jan. 18, 20, and Feb. 8, 1896.*

(Before Lord RUSSELL, C.J., WRIGHT and KENNEDY, JJ.)

*Re ARTON (No. 2). (a)*

*Extradition—Falsification of accounts by officer of public company —The crime of faux—Power to surrender in respect of falsification—Extradition Treaty with France, 1878, art. 3, clauses 2, 18—Extradition Act, 1870 (33 & 34 Vict. c. 52) First Schedule.*

*An order of committal made against a prisoner, who had been a member or director of a public company in France, for his extradition to the French Government, specified as one of the offences "faux (falsification of accounts and using falsified accounts)." The committing magistrate had come to the conclusion that there was no evidence of forgery or such falsification of accounts as would amount to forgery, according to English law, but that there was sufficient evidence of such falsification by the prisoner in his character of public officer of a company as would constitute a crime both according to English law, and also according to French law as faux, or forgery within the Code Pénal.*

*Held, that the falsification of accounts charged was a crime within the Extradition Treaty with France, as coming within the 18th clause of art. 3 (English version), and within the 2nd clause of the same article (French version) as faux; that such falsification was a crime according to French law, being faux or forgery within art. 147 of the Code Pénal; that it was also a crime*

(a) Reported by W. W. ORR, Esq., Barrister-at-Law.



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according to English law, within sect. 83 of the Larceny Act, 1861, and sect. 1 of the Falsification of Accounts Act, 1875, and that it was an extradition crime within the first schedule of the Extradition Act, 1870, and was therefore a crime in respect of which extradition could be granted, but that the order should be amended by adding words to show that the falsification was in the character of director, officer, or member of a public company.

**R**ULE calling upon the Secretary of State for the Home Department, Sir John Bridge (the chief metropolitan magistrate), and the Government of the French Republic, to show cause why a writ of *habeas corpus* should not issue, directed to the governor of Holloway Prison, commanding him to bring the body of Emile Arton into Court to abide the judgment of the Court.

The rule was obtained at the instance of Arton, who had been arrested in London in November, 1895, upon a warrant which had been issued in Paris. He had been brought before Sir John Bridge, and an order of committal had been made against him for the purpose of his being extradited to the French Government.

The order of committal had been made against Arton, who was described as an officer, member or director of a public company in France, in respect of six separate offences, the first of which was described in the order of committal as "*faux* (falsification of accounts and using falsified accounts)."

The present rule was granted upon one point only, and in respect of one only of the crimes specified in the order of committal, namely, the crime of "*faux*," translated in the order as "falsification of accounts and using falsified accounts"; and the rule was obtained on the ground that, as the magistrate had negatived the idea of forgery by Arton, *faux* (falsification of accounts and using falsified accounts), was not a crime within the Extradition Treaty with France, and was therefore not a crime in respect of which the accused could be surrendered.

The facts are fully set out in the judgment.

Sir R. Webster (A.-G.), Sir R. Finlay (S.-G.), and Sutton, for the Crown, in showing cause, contended that the crime of *faux* is within the Extradition Treaty with France, whether the English or the French version of the Treaty, and further contended that it was a crime according to the law of England and within the Extradition Acts, and therefore that a crime in respect of which the extradition might properly be granted. With regard to the contention that *faux* means forgery, and that as the committing magistrate had expressly negatived the idea of forgery, the accused could not be committed for *faux*—*Faux* includes not only "forgery"; it includes also falsification of accounts, and it was clear from the two versions of the Treaty that the contracting parties when they used the word *faux*

meant more than "forgery," as that term is used in English law. Although *faux* was generally translated by the word "forgery"; it had a wider meaning than forgery, the French definition of *faux* extending further than the English definition of forgery. As to what was forgery in English law the cases of *Ex parte Windsor* (12 L. T. Rep. 307; 6 B. & S. 522) and *Reg. v. Ritson* (21 L. T. Rep. 437; L. Rep. 1 C. C. R. 200) might be referred to. Although Arton might not have been guilty of forgery—and it could not now be asserted that he was—still there was a *prima facie* case against him with regard to *faux* in the sense of the falsification of accounts. That brought the case within clause 2 of art. 3 of the French version of the Treaty, and the case also came within clause 18 of art. 3 as fraud by a public officer of a company. *Faux* was also a crime within art. 147 of the French Code Pénal. Therefore *faux*, or the falsification of accounts, was a crime both according to French law and within both versions of the Treaty. Then with regard to English law, falsification of books, writings, or valuable securities was a crime by sect. 83 of the Larceny Act, 1861 (24 & 25 Vict. c. 96), and falsification of accounts by a clerk, officer or servant, was made a criminal offence by sect. 1 of the Falsification of Accounts Act, 1875 (38 & 39 Vict. c. 24); so that Arton could, if the offences had been committed in this country, have been indicted either under sect. 83 of the Larceny Act, 1861, or under sect. 1 of the Falsification of Accounts Act, 1875. The committal order here was under clause 18 of art. 3, which specifies "fraud by a bailee, . . . or member, or director, or public officer of any company made criminal by any Act for the time being in force"; and that was included as an extradition crime within the Extradition Acts in the first schedule to the Extradition Act of 1870. If any doubts were raised as to the falsification not being by a clerk or servant, there could be no objection to add those words after the words falsification of accounts, if this was done Arton could not be tried for the wider meaning of *faux*, but only in respect of the charge of which evidence was given before the magistrate. All the conditions therefore for extradition were satisfied, as Arton had committed a crime according to the laws both of France and of England, and a crime which was within the Extradition Treaty and the Extradition Acts.

*C. W. Mathews* in support of the rule.—Arton was accused of the crime of *faux*, and that was the crime mentioned in the order of committal. It was important to bear in mind that the magistrate completely negatived the idea of forgery, and held that no forgery in the falsification of accounts had been committed according to English law; and the equivalent in English law of *faux* was forgery. In the dictionaries it was translated as forgery, and in the French version of the Treaty, in clause 2 of art. 3, it was given as *faux*, the translation of the word in the English version being "forgery." Moreover, in clause 147 of the Code Pénal *faux* was clearly forgery and nothing else. Being therefore

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equivalent to forgery, and the magistrate having refused to commit for forgery, Arton could not be committed for that which was equivalent to forgery, namely, *faux*. But the learned magistrate had added in a parenthesis, "falsification of accounts and using falsified accounts." Dealing with the words so added, the charge against the accused was falsification of accounts simply, without stating that such falsification was in the character of trustee or as a member or director of a public company, words which would be necessary to bring the charge of falsification within clause 18 of art. 3 of the Treaty. Being a charge of falsification of accounts simply it was not within the treaty at all, and not within the offences mentioned in the first schedule to the Extradition Act, 1870. The magistrate has therefore committed for an offence not within the Treaty, which he had no jurisdiction to do. Falsification of accounts is not a crime under sect. 83 of the Larceny Act, 1861, because to constitute it a crime within that section, the falsification must be described as falsification as a director, public officer, or member of a public company, and it was not so described in the present case. It was not a crime within sect. 1 of the act of 1875, as to bring it within that section it must be described as falsification by a clerk, officer, or servant, and it was not so described. It was to be assumed that the magistrate had designedly omitted the words "by a clerk, officer, or servant," after the words "falsification of accounts," and even if those words were added, although there might be then a crime according to English law, yet it would not be within the Treaty. For these reasons the rule ought to be made absolute.

*Cur. adv. vult.*

*Feb. 8.*—The judgment of the Court (Lord Russell, C.J., Wright and Kennedy, JJ.) was read by

LORD RUSSELL, C.J.—In this case the French Government demanded the extradition of Arton under the Treaty between the Queen and the French Republic, signed in 1876 and ratified in 1878. The demand was based on the allegation that Arton had committed a number of crimes against the law, and in the territory of France, which are extradition crimes within the Treaty. On the 6th day of December, 1895, after inquiry before him the chief metropolitan magistrate made a committal order to Holloway Prison, with a view to Arton's extradition in respect of the accusation against him of the commission of the crimes of "*faux* (falsification of accounts and using falsified accounts), fraud by an agent, fraud by a trustee, fraud by a director and public officer of a company, obtaining money and goods by false pretences, crimes by a bankrupt against bankruptcy law, larceny, and embezzlement, within the jurisdiction of the French Republic." It is in reference to the first of these charges only that any question arises. Subsequently, on the 21st day of December, 1895, this Court, on the application of Arton's counsel, granted an order calling on the Governor of Holloway Prison to show cause why a writ of *habeas corpus* should not issue. The appli-

cation was in argument based on the allegation that the chief magistrate had come to the conclusion that no forgery according to English law had been committed in the falsification of accounts and in the using of falsified accounts imputed, and it was therefore contended that he could not properly commit Arton for *faux*, the French equivalent or translation of "forgery," and, further, that he could not properly commit for such falsification on two grounds—(1) because the falsification was not in the order of committal described as committed by Arton as a director or member of a public company, or as a clerk or servant, which would be necessary to constitute falsification a crime according to English law; and (2) that, even if the order of committal were amended in this respect, he could not properly commit for falsification on the ground that such falsification is not an extradition crime within the Treaty. Before proceeding to deal with these points it will be well to make clear what we understand are the admitted facts. It is true that the chief magistrate did in fact come to the conclusion that there was no evidence of forgery according to English law, but he also came to the conclusion that there was sufficient evidence of the commission by Arton of the crime of fraudulent falsification of accounts in his character of member, director, or officer of a public company according to English law, and that such falsification of accounts constituted the crime of *faux*, or forgery, against the law of France within the meaning of the 147th article of the Code Pénal. The omission to state the character in which the falsification was committed in the order of committal is not a point of substance. I proceed to consider the other alleged grounds. The conditions of extradition, the fulfilment of which we have to consider, are the following: (1) The imputed crime must be within the Treaty; (2) it must be a crime against the law of the country demanding extradition; (3) it must be a crime within the English Extradition Acts, 1870 and 1873; and (4) there must be such evidence before the committing magistrate as would warrant him in sending the case for trial if it were an ordinary case in this country. Is, then, the crime of such falsification a crime within the Treaty? In my opinion it is. I take first the English version. The 13th head of art. 3 of the Treaty (English version) runs: "Fraud by a bailee, banker, agent, factor, trustee, or director, or member, or public officer of any company made criminal by any Act for the time being in force." At the time the Treaty was signed and at the time it was ratified, the Larceny Act, 1861 (24 & 25 Vict. c. 96) was in force. By sect. 83 it is provided that "whosoever being a director, manager, public officer, or member of any public company, shall, with intent to defraud, mutilate, or falsify any book, paper, writing, or valuable security belonging to the company, or make or concur in the making of any false entry, or omit or concur in omitting any material particular in any book of account or other document, shall be guilty of a misdemeanour." That this was regarded by

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the Legislature as a serious crime is shown by the punishment which may follow on conviction for it—namely, penal servitude for any term not exceeding seven years and not less than three, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement. Further, the Act passed in 1875 to amend the law with reference to the falsification of accounts was also in force. By the first section it is provided that “if any clerk, officer, or servant, or any person employed or acting in the capacity of a clerk, officer, or servant, shall wilfully, and with intent to defraud, destroy, alter, mutilate, or falsify any book, paper, writing, or valuable security or account which belongs to or is in the possession of his employer, &c., or shall wilfully and with intent to defraud make or concur in making any false entry, &c., the person offending shall be guilty of a misdemeanour, and be liable to be kept in penal servitude for a term not exceeding seven years, or to be imprisoned with or without hard labour for any term not exceeding two years. It seems clear, therefore, that the falsification charged, if committed by a member, public officer, or director of a public company (which Arton in fact was), or by a clerk or servant, is within the English version of the Treaty. In other words, such a falsification is a crime against English law in respect of which the French Government has engaged (other conditions being fulfilled) to grant extradition. I now turn to the French version of the Treaty. The French version of the 18th head of art. 3 of the Treaty is certainly not a translation of the English version, nor does it in substance cover the same ground. It deals with the fraudulent misappropriation by officers and members of a company of the funds of a company. It has no reference to falsification of accounts pure and simple by such officers and members. The English version, on the other hand is, as we have seen, much wider, and by its incorporation of the Acts of 1861 and 1875 includes falsification of accounts in the manner charged against Arton. We must therefore look to see whether such falsification of accounts constitutes a crime under any other head of the Treaty according to the French version. I turn to head 2 of art. 3, of the French version. That article, both in the English and French version, deals with forgery. As to the English version, it is clear that all falsifications of accounts do not constitute forgery, while it is equally clear that the falsification of accounts may take such a form as to amount to forgery at common law or under the Act of 1861 (24 & 25 Vict. c. 98), to consolidate and amend the statute law relating to forgery. But in the present case we must assume, as I have said, that the chief magistrate has come to the conclusion that there was no evidence before him in this case which warranted him in committing Arton for any such falsification of accounts as, according to English law, amounted to forgery, but that there was evidence before him of such a falsification of accounts as amounted to forgery according to French law and within the Treaty. Was



he warranted in that conclusion? I think he was. The French version of the second head of art. 3 runs as follows: "Faux ou usage de pièces fausses; contrefaçon des sceaux de l'Etat, poinçons, timbres, et marques publics contrefaites." There is no doubt, in my judgment, that the opening words means forgery of or using false documents. Turning to the Code Pénal we find a number of articles dealing with various kinds of forgeries, as of money, of public seals, bank notes, &c., and then a group of articles relating to forgery of public and authentic writings, and of writings of commerce or banking. Of this group art. 147 is one. It runs as follows: "Seront punies des travaux forcés à temps, toutes autres personnes qui auront commis un faux en écriture authentique et publique ou en écriture de commerce ou de banque; soit par contrefaçon ou altération d'écritures ou de signatures; soit par fabrication de conventions, dispositions, obligations, ou décharges, ou par leur insertion après coup dans ces actes; soit par addition ou altération de clauses, de déclarations, ou de faits que ces actes avaient pour objet de recevoir et de constater." Does that article cover and include the crime of falsification of accounts according to English law? I think it clearly does. If so, it is an extradition crime according to and within both versions of the Treaty. In the English version it comes under the 18th head of art. 3; in the French version it comes under the second head of the same article. It is to be noted that in the "Extrait des Procédures Déposées au Greffe de la Cour d'Appel de Paris" amongst the crimes imputed to Arton is (following the words of art. 147 of the Code Pénal) "le crime de faux en écritures de commerce." Further (French law being a question of fact to be determined as such in our Courts), we are furnished with an affidavit from an expert in French law—M. Gabriel Astoul, a French advocate—which, after setting forth a translation of art. 147, proceeds as follows: "I am most clearly of opinion that falsification of accounts under the circumstances referred to in the depositions used at Bow-street Police-court on the application for the surrender of Emile Arton constitutes the offence of '*faux*' mentioned in the Treaty between Great Britain and France, and set out in art. 147 of the French penal code." The affidavit further explains that "the word 'other' in the said article means 'persons other than those referred to in art. 146—viz., public functionaries or public officers.'" It seems therefore clear that the falsification of accounts, of which the chief magistrate has decided there was sufficient evidence is a crime against the law of France and within the French version of the Treaty; in other words, that such falsification of accounts is a crime in respect of which the Government of this country has solemnly engaged (other conditions being fulfilled) to grant extradition. Further, it is clear that the crime in question, whether regarded as forgery or falsification of accounts, is an extradition crime within the meaning of the Extradition Acts, 1870 and 1873. The learned

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law officers of the Crown, for some reason which I failed to appreciate, seemed unwilling to admit that “*faux*” in art. 147 means forgery. For my part it seems to me to be clear that it means that and nothing else, and it is to be observed that M. Gabriel Astoul does not suggest in his affidavit that it has any other meaning. The matter then stands thus: “Evidence of the crime of falsification of accounts according to English law not amounting to forgery according to that law, and within the 18th head of art. 3 of the Treaty (English version), evidence also that that crime of falsification is a crime according to French law ranging itself according to that law under the head of forgery, and within head 2 of art. 3 of the Treaty (French version). Why, then, is it not to be regarded as an extradition crime? I see no valid reason. English law, as I have said, treats some acts of falsification of accounts as forgery, but does not treat all of them as such. The French law, on the other hand (as we must conclude on the evidence of fact before us), treats such falsification of accounts as alleged in this case as forgery within art. 147 of the Code Pénal. Is extradition to be refused in respect of acts covered by the Treaty and gravely criminal according to the law of both countries, because in the particular case the falsification of accounts is not forgery according to English law, but falls under that head according to French law? I think not. To decide so would be to hinder the working, and narrow the operation of most salutary international arrangements. It seems to me, therefore, that all the conditions which I have mentioned have in this case been fulfilled. In my judgment these treaties ought to receive a liberal interpretation, which means no more than that they should receive their true construction according to their language, object, and intent. I know no head of the French law for which an exact equivalent is to be found in the law of England. The English and French texts of the Treaty are not translations of one another. They are different versions, but versions which, on the whole, are in substantial agreement. We are here dealing with a crime alleged to have been committed against the law of France, and if we find, as I hold that we do, that such a crime is a crime against the law of both countries, and is, in substance, to be found in each version of the Treaty, although under different heads, we are bound to give effect to the claim for extradition. I think I have correctly stated the view of the facts taken by the learned chief magistrate. We are not a Court of Appeal on questions of fact from him. We have only to see that he had such evidence before him as gave him authority and jurisdiction to commit. But, lest there should be any misapprehension, I think it well that the view of the Court should be presented to him, and that the order of committal should be remitted to him in order that it may be made clear in respect of what crime of “*faux*” Arton is committed. The first offence should, I think, be described as “the crime of fraudulent

falsification of accounts as a director, officer, or member of a public company according to the law of England, and constituting the crime of 'faux en écritures de commerce' within art. 147 of the French Code Pénal." The rule will therefore be discharged.

*Rule discharged.*

Solicitor for the Crown, *The Solicitor to the Treasury.*

Solicitors for the accused, *Arthur Newton and Co.*

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### CROWN CASES RESERVED.

*Nov. 23, Dec. 14, 1895, and Feb. 3, 1896.*

(Before Lord RUSSELL, C.J., HAWKINS, MATHEW, WILLS, and WILLIAMS, JJ.)

REG. v. RILEY. (a)

*Forgery—Forged instrument—Telegram—Practice—Indictment—Sufficiency of description—Admissions—Plea of guilty—What admitted by—How far depositions admitted—24 & 25 Vict. c. 98, ss. 38, 42.*

*A telegram may be a forged instrument within 24 & 25 Vict. c. 98, s. 38, that section not being confined to instruments such as are mentioned in the earlier sections of the Act, but including instruments to forge which is either a felony or a misdemeanour.*

*Where subsequently to a race having been won by a horse named "Lord of Dale," a forged telegram was sent to certain bookmakers containing the words "Three pounds Lord Dale," in consequence of the receipt of which the sum of 9l. was credited by the bookmakers in the account of the person by whom the telegram purported to have been sent :*

*Held (Lord Russell, C.J. and Williams, J. dissentientibus), that the sender of the telegram had been rightly convicted, under 24 & 25 Vict. c. 98, s. 38, of procuring a forged instrument to be delivered :*

*Per Hawkins, J. : The description in an indictment of a forged instrument as "a forged telegram, that is to say, a forged message and communication purporting to have been delivered at a certain post-office, to wit, at Royal Exchange, Manchester, aforesaid, for transmission by telegraph, and to have been*

(a) Reported by R. CUNNINGHAM GLEN, Esq., Barrister-at-Law.

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*transmitted by telegraph to a certain other post-office, to wit, the head post-office at Manchester aforesaid," is a sufficient description of such instrument for the purposes of 24 & 25 Vict. c. 98, s. 38; and would, after verdict, be sufficient for the purposes of an indictment under sect. 42 of that Act.*

*Also per Hawkins, J.: By pleading guilty a prisoner does not admit the truth of the facts stated in the depositions. He merely admits that he is guilty of the offence as charged in the indictment and nothing more.*

**T**HIS case came on for hearing on the 23rd day of November, 1895. But, as it was uncertain from the case as then stated, whether or not any question had been reserved for the consideration of the court other than the question whether a telegram could be a forged instrument within 24 & 25 Vict. c. 98, s. 38, the case was referred back to Kennedy, J., who re-stated it in the following form, viz.:

The prisoner Henry Riley together with Albert Edward Walden, was indicted at the assizes just concluded before me at Manchester, under the statute 24 & 25 Vict. c. 98, s. 38. The indictment contained two counts, which charged the said Henry Riley and the said Albert Edward Walden as follows:

Lancaster to wit.—The jurors for our Lady the Queen upon their oath present that Henry Riley and Albert Edward Walden on the 1st day of July, in the year of our Lord 1895, at the city of Manchester, in the county of Lancaster, feloniously did cause and procure to be delivered and paid to one Henry Dorber certain money, to wit, the sum of nine pounds, the property and moneys of George Crompton and Samuel Radcliffe, under, upon, and by virtue of a certain forged instrument, to wit, a forged telegram, that is to say, a forged message and communication purporting to have been delivered at a certain post-office, to wit, at Royal Exchange, Manchester, aforesaid, for transmission by telegraph, and to have been transmitted by telegraph to a certain other post-office, to wit, the head post-office at Manchester aforesaid, with intent thereby then to defraud, they the said Henry Riley and Albert Edward Walden then well knowing the same forged instrument to be forged, against the form of the statute in such case made and provided and against the peace of our Lady the Queen, her crown and dignity.

Second count.—And the jurors aforesaid upon their oath aforesaid do further present that the said Henry Riley and Albert Edward Walden on the day aforesaid, in the year aforesaid, at the city aforesaid, in the county aforesaid, feloniously did endeavour to cause and procure to be delivered and paid to one Henry Dorber certain money, to wit, the sum of nine pounds, the property and money of George Crompton and Samuel Radcliffe under and by virtue of a certain forged instrument, to wit, a forged telegram, that is to say a forged message and communication purporting to have been delivered at a certain post-office to wit, at Royal Exchange, Manchester, aforesaid, for transmission by telegraph, and to have been transmitted by telegraph to a certain other post-office to wit, the head post-office at Manchester aforesaid, with intent thereby then to defraud, they the said Henry Riley and Albert Edward Walden then well knowing the same forged instrument to be forged, against the form of the statute in such case made and provided, and against the peace of our Lady the Queen, her crown and dignity.

Both the accused, who were separately defended by counsel, pleaded "Not guilty," and were put upon their trial before me, on the 7th day of November last, but before the case was opened Henry Riley, on the application of Mr. Mellor, his counsel, was permitted to withdraw his plea of "Not Guilty," and to plead

“Guilty,” and the case before the jury proceeded against Albert Edward Walden only.

The material evidence relating to the telegram, relied upon as the “instrument,” the sending of it, and its operation, was briefly as follows:—

It was proved that the telegram was a telegram sent out on the 27th day of June last, from the Manchester office, and received by Samuel Radcliffe, bookmakers, about 3.15 p.m. Upon its face it appeared to be addressed by Dorber to “Golf,” which is the telegraphic name of Messrs. Crompton and Radcliffe, and to have been handed in at the Royal Exchange office (which is a branch office) at 2.40 p.m., and to have been received at the Manchester office at 2.51 p.m. of the same day. The body of the telegram was in these words: “Three pounds Lord of Dale.” Lord of Dale was the name of a horse running that day in the Newcastle Handicap, Gosforth Park, timed for 2.45 p.m. Messrs. Crompton and Radcliffe, according to practice as bookmakers, accept bets sent by telegraph whenever received by them, if it appears upon the face of the telegram to have been handed in by the sender at a time earlier than the running of the race; and accordingly they accepted this bet as a bet by Dorber on Lord of Dale.

The evidence for the prosecution showed that the telegram was a forgery; that no such telegram was sent from the Royal Exchange office to the Manchester office, and that the telegram in question was despatched from the Manchester office to Messrs. Crompton and Radcliffe, after the race had been run, and won by Lord of Dale. Messrs. Crompton and Radcliffe treated Dorber (against whom there was no suggestion of bad faith) as entitled to receive from them 9*l.* on the footing of his having made the bet contained in the telegram, and Dorber received the said amount, in a settlement of betting accounts between himself and them. All the material facts proved in evidence appear on the depositions.

In the course of the trial it appeared to me to be open to question whether a forged “telegram,” as alleged in each count of the indictment was a forged “instrument” within the 38th section of the statute above mentioned. At the close of the case, and after hearing the learned counsel for the prosecution upon the point, I left the case to the jury, reserving to myself liberty to reserve the point for the consideration of the Court in case of a conviction, and directing the jury to assume, for the purposes of the day, that the “telegram” in evidence was an instrument” within the meaning of the section.

As Walden was acquitted by the verdict of the jury, the justice of reserving the point in his case did not arise.

Henry Riley, who, as I have stated, had pleaded guilty to the indictment, and in whose case therefore no evidence was given, was sentenced by me to nine calendar months imprisonment with hard labour. But it appeared to me that there was sufficient

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doubt as to the propriety of the conviction, in view of the requirement of the said 38th section that the document forged must be an "instrument," and as to the sufficiency of the indictment to which he had pleaded "guilty," in satisfying such requirement in its averment of the "instrument" to make it just that I should state a case for the opinion of the Court upon the point.

I request the opinion of the Court as to whether either count of this indictment can be supported, the only statement of the "instrument" required by the said 38th section of the said statute being simply the statement of a "telegram" without any averment as to the contents or effect of the telegram to show that it constituted an instrument within the meaning of the said section; and whether, if they cannot be so supported, the conviction should be upheld.

Further, inasmuch as the prisoner having pleaded guilty, as I have already pointed out, there was no evidence given in his case, it has appeared to me in re-stating the case that if the Court is of opinion that the defect (if any) in the indictment, in reference to the statement of the "instrument," is capable of being cured by reference to the facts, and if the prisoner by his plea of guilty must be taken as having admitted the facts appearing on the depositions, and the Court should think it right and permissible to look at the depositions, I ought to request, and therefore I do request, the opinion of the Court as to whether this conviction can be upheld, upon the indictment and such depositions as disclosing the existence of a forged "instrument" within the meaning of the said 38th section of the said statute. For the purpose of this question, and of enabling the Court, if it should think fit, to look at the said depositions, I send the depositions with the copy exhibits attached to form part of this case.

By 24 & 25 Vict. c. 98, s. 38, it is enacted that :

Whosoever, with intent to defraud, shall demand, receive, or obtain, or cause or procure to be delivered or paid to any person, or endeavour to receive or obtain, or to cause or procure to be delivered or paid to any person any chattel, money, security for money, or other property whatsoever under, upon, or by virtue of any forged or altered instrument whatsoever knowing the same to be forged or altered . . . shall be guilty of felony.

*F. H. Mellor*, on behalf of the prisoner, submitted that to constitute an instrument, a formal legal writing was necessary, a writing which contained a contract or an order. In its ordinary meaning, the term "instrument," according to Dr. Johnson in his dictionary, means "that by means whereof something is done," and contemplated, therefore, a writing which is capable of conferring some legal right. He further submitted that assuming a telegram could be an instrument in the ordinary sense of that term, it was not an instrument within the meaning of sect. 38. That being a penal enactment, it was to be construed strictly as relating only to instruments "under, upon, or by



virtue of" which property is fraudulently obtained. The instrument therefore, to be within the section, must be of some legal validity, and this was borne out by the writings specified in the following section. He further submitted that, even assuming a telegram could be an instrument within sect. 38, the telegram in question here was in no sense an instrument because it was not a request for the payment of money, and there was nothing upon the face of the telegram which showed any obligation on the part of Crompton and Radcliffe to pay anything. The setting out of the telegram alone did not show that it was an instrument, and further allegations were necessary to show that it was. He cited the direction of Platt, B., in *Reg. v. Ellis* (4 Cox C. C. 258) as showing that it was necessary that it should appear on the face of the document itself that it was an instrument, and submitted that here the telegram showed nothing on the face of it which was intelligible, and in order to make its meaning intelligible statements not on the face of it were necessary; consequently the conviction was not supported by the plea of guilty to the indictment, such plea merely admitting such allegations as appeared upon the indictment.

Sir *R. Finlay* (S.-G.) (with him *McCall*, Q.C. and *Casserley*), for the prosecution, submitted that sect. 28 had been framed with the object of including every document that could be forged. The telegram in question was an instrument, the immediate and intended effect of which was that Crompton and Radcliffe should become debtors to Dorber. The liability to pay the money was not material, and a document which created an obligation whether legal or moral was an instrument within the section. According to *Reg. v. Sharman* (1 Dears. C. C. 285), to forge a letter purporting to show that a person has given money to another person is forgery at common law, and whatever document was capable of being forged at common law was an instrument within sect. 38. According to the contention on behalf of the prisoner, the word instrument was used in sect. 44 of the Act in a sense different from that in which it was used in sect. 42. These sections, however, replaced 2 & 3 Will. 4, c. 123, s. 3, and it could not be contended that they did not apply to all cases of forgery, whether under the previous sections of the Act or at common law. There was no reason for limiting the meaning of the word "instrument" in sect. 38 more than in sect. 42 of the Act, and in that section it manifestly applied to all writings. No doubt the words "instrument or writing" were to be found in sect. 39, but such use of the words was tautologous. In any case it was not necessary in order to support the conviction to make out that the telegram was an instrument within sect. 39, and the provisions of sect. 38 were perfectly general. He further contended that it was not necessary for a document to be an instrument that it should be of some validity on the face of it. Many mercantile documents have no meaning to ordinary persons on the face of them, as, for instance, a code, and yet

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were perfectly good and valid instruments. Further, it was rendered sufficient by sect. 42 of the Act to describe the instrument by the name or designation by which it is usually known or by the purport thereof, and this dispensed with the necessity of setting out the instrument *verbatim*. In *Reg. v. Ritson* (L. Rep. 1 C. C. R. 200) Blackburn, J., used the word instrument quite generally, and in *Reg. v. Sharman* (*ubi sup.*) a document giving a character was regarded as an instrument, and in *Reg. v. Moore* (37 L. J. 204, M. C.) letters of recommendation; while in Russell on Crimes, &c., 4th edit., vol. 2, p. 709, forgery at common law is defined as the false making alteration or addition to any written instrument. The word "instrument" was in fact never found used in any but a general sense, and wherever it was found used with other words it was so used in a reduplicated sense.

*Cur. adv. vult.*

*Mellor* in reply.

*Feb. 3.*—HAWKINS, J. read the following judgment:—The main question for us to decide is whether the telegram upon which this indictment was preferred is a "forged instrument" according to the true interpretation of sect. 38 of 24 & 25 Vict. c. 98. Messrs. Crompton and Radcliffe are bookmakers at Manchester. Their practice is to accept bets on race horses offered them by telegram by persons desirous of backing horses, provided that on the face of the telegram it appears to have been handed in by the sender at a time earlier than that fixed for the running of the race upon which the bet is offered. On the 27th day of June last a horse named Lord of Dale was about to run in the Newcastle Handicap, and the time fixed for the running of that race was 2.45 p.m. The prisoner on the afternoon of that day sent to Crompton and Radcliffe in the name of a person named Dorber, a customer of theirs, and who had authorised the prisoner to use his name, a telegram which on the face of it purported to have been handed in at the Royal Exchange branch post-office in Manchester at 2.40 p.m. and to have been received at the head office at Manchester at 2.51 p.m., whence it was sent out to Crompton and Radcliffe. The body of it was in these words, "Three pounds Lord of Dale," and the bet was accepted by them. The starting fair odds against Lord of Dale at the time when the telegram purported to have been handed in were three to one. This telegram was received by Crompton and Radcliffe at 3.15 p.m., and the bet was accepted by them in the ordinary course. Lord of Dale won the race, and upon the faith that the telegram had been handed in as it purported to have been Crompton and Radcliffe in due course paid Dorber or allowed him in account the amount won by him—namely, the sum of 9l. The telegram was in fact not handed in or sent from the Royal Exchange office at all, but was despatched by the prisoner from the head office in the form in which it reached Crompton and Radcliffe after the race had been run and won. It is fair to Dorber to say that it was not suggested that he was a party to

that fraud. By the 24 & 25 Vict. c. 98, s. 38, "Whosoever with intent to defraud shall demand, receive, or obtain, or cause, or procure to be delivered or paid to any person, or endeavour to receive or obtain, or to cause or procure to be delivered or paid, to any person any chattel, money, security for money, or other property whatsoever under, upon, or by virtue of any forged or altered instrument whatsoever, knowing the same to be forged or altered, shall be guilty of felony." The prisoner was indicted under that section for procuring, with intent to defraud, the payment to Dorber "by virtue of a forged instrument, to wit, a forged telegram—that is to say, a forged message and communication purporting to have been delivered at a certain post-office, to wit, at Royal Exchange, Manchester, for transmission by telegraph, and to have been transmitted by telegraph to a certain other post-office, to wit, the head post-office at Manchester aforesaid, with intent then to defraud—he, the said Henry Riley, then well knowing the same forged instrument to be forged, against the statute, &c., and against the peace, &c." There was a second count varying the charge to which I need not refer. To this indictment the prisoner pleaded guilty, but the learned judge before whom the case came on to be tried, entertaining a doubt whether the telegram was an instrument within the meaning of sect. 38, reserved that question for the consideration of the Court for Crown Cases Reserved; and also desired the opinion of the court as to the sufficiency of the indictment. As to the indictment: assuming the telegram to be an instrument within the meaning of the 38th section, I think the indictment sufficiently describes it. I consider it would, after a plea of guilty, have been sufficient under sect. 42 of the Act even had the indictment been for forging the instrument. *A fortiori*, it is so upon this indictment, which is not for forgery, but for procuring money to be paid by virtue of a forged instrument. I think it amply sufficient. See *Reg. v. Taylor* (1895) 1 Q. B. 95. I proceed to discuss the question reserved for our consideration—Whether the telegram described in the case constitutes a forged instrument in law, and whether it is such an instrument as is contemplated by sect. 38. My answer to both these questions is in the affirmative. In 4 Blackstone's Commentaries, p. 245, forgery at common law is defined as "the fraudulent making or alteration of a writing to the prejudice of another man's right." I seek for no other definition for the purposes of the present discussion. That a postal telegram is a writing is to my mind clear. It originates in a written message addressed and signed by the sender, and delivered by him into the post-office of despatch for the express purpose that it shall, in the very words in which it is penned be transmitted by means of electricity to another post-office which I will call the arrival office, and that it shall there again, on its arrival, be committed to writing *verbatim et literatim*, and that such last-mentioned writing shall be handed to the person to whom it

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is addressed. The writing delivered in at the office of despatch is the authority of the postmaster to transmit the message and of the postmaster at the arrival office to commit it to writing and to deliver it to the addressee as the sender's written message to him. This message sent out from the arrival office is, in my opinion, as binding upon the sender as though he had written it with his own hand. If I am right in this it follows that an offer by telegram accepted by telegram might well create a contract sufficient to satisfy the Statute of Frauds between the sender and the addressee, and a verbal offer accepted by telegram might create an ordinary contract. For this there is the authority of the Court of Common Pleas so long ago as 1870. See *Godwin v. Francis* (L. Rep. 5 C. P. 295). Assuming the telegram to be such a writing as I have stated, a bare reading of the contents of it, coupled with the admission of its falsity, and of the purpose for which it was made, are overwhelming to establish that it was fraudulently made to the prejudice of another man's right—and thus a forgery at common law. For this I need only cite the judgment of Blackburn, J. in *Reg. v. Ritson* (1 C. C. R. 203): "When an instrument professes to be executed at a date different from that at which it really was executed and the false date is material to the operation of the deed, if the false date is inserted knowingly and with a fraudulent intent it is a forgery at common law." In this case, unless the telegram was dated and despatched before the race was run it would have been inoperative; the time of despatch was, therefore material. Falsely to write the telegram so as to make it appear as if it were sent in for despatch before the race was run, when it was not sent in till afterwards, was to make it appear on the face of it to be that which it was not. The more vexed questions, however, are whether the writing can be treated as an instrument, and, if so, whether it is such an instrument as is contemplated by the 38th section, the contention for the prisoner being that it cannot properly be treated as an instrument at all, and that, even if it can, the 38th section has reference only to such forged legal or commercial instruments as are mentioned and made felonies in the earlier sections of the statute. After much consideration I have formed an opinion adverse to the prisoner on both these points. Now, can this telegram properly be called an instrument? I am not aware of any authority for saying that in law the term "instrument" has ever been confined to any definite class of legal documents. In the absence of such authority I cannot but think that the term ought to be interpreted according to its generally understood and ordinary meaning as stated in the dictionaries of Dr. Johnson and of Webster. Both these give definitions, first, how the word is to be treated when applied to a chattel—viz., as "A tool used for any work or purpose." When applied to a writing Dr. Johnson defines it as "A writing containing any contract or order." Webster's definition is "A writing expressive of some act, contract, process,

or proceeding." When used generally Dr. Johnson speaks of it as "That by means whereof something is done." Webster as "One who or that which is made the means or caused to serve a purpose." These definitions cover an infinite variety of writings whether penned for the purpose of creating binding obligations or as records of business or other transactions. Every one of the documents mentioned in the statute are unquestionably instruments and intended to be so treated. Throughout the statute it is evident the Legislature attached no rigid definite meaning to the word, for it is used in a variety of senses, all falling within one or other of the definitions of Dr. Johnson and Webster to which I have referred. Thus, in sect. 1 of the Act the word is used to signify a document having thereon affixed a counterfeit of the Great Seal. In sects. 9 and 14 the word is used to denote the tool or implement to be used for making a peculiar kind of paper. In sects. 16, 17, 18 the word is used to indicate tools for the manufacture of paper, plates or implements to be used for carrying out forgeries. In sect. 21 the expression is "testamentary instrument." In sect. 29 the word is applied to written or printed documents made evidence by Act of Parliament. In sect. 33 it is applied to writings purporting to be made by the Accountant-General of the Court of Chancery, &c. In sect. 34 it refers to recognisances. To most of the forged documents mentioned in the sections before sect. 38 and declared to be felonies the term "instrument" is not applied at all; although no doubt could be suggested that they are intended to be treated as instruments within the meaning of the Act. It will not, of course, be denied that there are very many instruments of an important character, commercial and otherwise, the forgery of which are only offences at common law. I do not, for instance, find that the forgery of an ordinary written contract (not under seal or specially named in the statute) is a felony. So also a certificate of ordination, though the forgery of it is a mere common law offence, was nevertheless spoken of as an instrument by Blackburn, J. in *Reg. v. Morten* (L. Rep. 2 C. C. R. 27). I call attention to these undeniable facts for the purpose of showing that there are many written documents of an important character beyond those documents mentioned in sect. 38 to which the words "any instrument whatsoever" used in that section apply in addition to those documents mentioned in the statute. In my view of the case the telegram in question is an instrument of contract; it is the instrument which completed the wager offered by Crompton and Radcliffe to those who were able and disposed to accept it (see *Carlill v. The Carbolic Smoke Ball Company*, 67 L. T. Rep. 837, in the Court of Appeal; (1892) 2 Q. B. 484, and the cases there cited, also the same case in the Court of Appeal, (1893) 1 Q. B. 256), and thenceforth an obligation was imposed upon each party in honour to fulfil it, according to the result of the race. I say in honour, because, though it was clearly not an illegal contract, it could not be enforced by any legal process.

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In virtue of it, and upon the assumption that the telegram was what it purported to be, Messrs. Crompton and Radcliffe paid the 9l. Assuming the document to be an instrument, I come to the only remaining question whether it is such an instrument as is within the meaning of sect. 38 of the statute. Why should it not be so? It is contended that the section has reference only to such instruments as are mentioned in the earlier sections of the statute, and that sect. 38 applies only to those instruments the forgery of which is punishable as a felony. Such a construction is, I think, erroneous. There is no definition of the word "instrument" in the statute to fetter us in giving to it the ordinary and general interpretation. It was clearly the intention of the Legislature by sect. 38 to create a new offence. If it had been the intention of the Legislature to limit the operation of the section to felonious forgeries, how easy it would have been to have used appropriate language for that purpose. So far from doing this, the Legislature, having used the term "instrument" in a variety of senses, all falling within one or other of the definitions I have above referred to, proceeds in sect. 38 to use language which, read in its ordinary sense, comprises every description of written instrument. What simpler, stronger, or more comprehensive words could they have employed than "any forged or altered instrument whatsoever" to convey an intention that every forged instrument should be covered by it, whether the forgery was a felony by statute or misdemeanour at common law? I think the Legislature intended exactly what it has said, and I feel strengthened in this view by the declaration of Mr. Greaves, Q.C. (who had much to do in the framing of the Criminal Law Consolidation Acts, of which this is one) in that chapter of his work relating to these statutes which treats of the construction of them, wherein he says: "It may be well to add that the word 'whosoever' is used throughout these Acts in the widest sense, so as to include every person capable of becoming a criminal." There is no reason why the word "whatsoever" should not be interpreted in a similar spirit. As to the word "any," he says: "It is also to be used in like manner so as to include every person or thing, or at least every person or thing other than the person or thing previously mentioned." Speaking of the expression "any other," he illustrates its intended interpretation by saying that the words "gunpowder or any other explosive substance" in sect. 19 of the "Offences against the Person Act" are intended to include every explosive substance. He points out, also, in the latter part of that chapter, that (for reasons he has given) any argument as to a difference in the intention of the Legislature which may be drawn from a difference in the terms of one clause from those in another will be of no weight in the construction of such clauses; moreover, in a note to the section now under consideration, he says, "This clause is intended to embrace every case of demanding, &c., any property whatsoever upon forged instruments." I think no



argument against the interpretation I have put upon sect. 38 can be derived from sect. 39 immediately following, for it expressly limits the operation of that section to statutory forgeries, by enacting that, whether such forgeries are created by that or by any other Act, the persons charged with them may be indicted as offenders against that Act. Again, in sect. 40, the operation of which is confined to statutory forgeries, it is expressly and unmistakably so limited. Sect. 41 deals with the question of venue in all cases of forgery, expressly stating that it shall apply to all forgeries, whether by statute or at common law. Sect. 42 deals with what shall be a sufficient description in an indictment of "any instrument charged as a forgery," while sect. 44, which makes it unnecessary to allege an intent to defraud any particular person, admittedly covers forgeries of every description, without any exception, and expresses that intention by the very same words used in sect. 38, "any instrument whatsoever." Is it possible that the Legislature, who clearly were alive to the difference between common law and statutory felonies, can have intended that a different construction should be put on these same words when used in sect. 38? The result is that, in my opinion, the conviction ought to be affirmed. In regard to a question suggested in the case, whether a person by pleading guilty to an indictment thereby admits the truth of the fact stated in the depositions, I think it right to express my opinion that he does not. He admits simply that he is guilty of the offence as charged in the indictment and nothing more.

The following judgment of WILLS, J. was read by Lord RUSSELL, C.J., viz. :—The only question in this case is whether a post-office telegram is an instrument within the meaning of 24 & 25 Vict. c. 98, s. 38. After a careful study of the Act, I am of opinion it is so. The Act is not very artistically drawn, and the words "instrument," "document" and "writing" are used in a manner which makes it sometimes difficult, at first sight, to say whether a real distinction is intended by the use of different words. Sects. 1 to 26, 28, 30, 32, 35 to 37, and 40 all relate to instruments or documents of various kinds known by definite designations and so described. They, therefore, throw no light upon the present question. Sect. 27 relates to the forgery of "documents" or "writings" intended to be used in evidence. Any writing so used would, in ordinary legal phraseology, be called part of the documentary evidence in the case, and probably this section would have been construed as including every description of writing so used, if the words "or writing" had been omitted. Sect. 29 relates to the forgery of "instruments" made evidence by Act of Parliament. This could only apply to writings of a more or less formal character; but this limitation follows from the subject-matter of the clause rather than from the use of the word "instrument." Sect. 31 relates to the forgery of "documents" or "writings" made or issued under the provisions of any Act of Parliament. The

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same remark applies. Such “documents” or “writings” must necessarily be of a more or less formal character, and the phrase “document or writing” in this section would appear to mean exactly the same thing as “instrument” in sect. 29. The same remark applies to sect. 33, where the corresponding phrase is “instrument or writing.” In sect. 34 the word “instrument” must, from the nature of the enactment, refer to writing of a formal character. In sect. 39, which relates to the forgery of “instruments or writings” designated in Acts of Parliament by any particular name or description, it is obvious that the meaning of the clause would have been exactly the same if the words “or writings” had been omitted. Sects. 40 to 45 are a group of enactments for facilitating procedure and obviating mere technical difficulties. There is no reason why they should not have the widest construction, and be applied to every kind of offence which, either by statute or at the common law, constitutes a forgery. On the contrary, there is every reason why sections inserted for the purpose of advancing justice by getting rid of mere useless technicalities, should be applied to forgeries of every description. Some of these sections are older than the Act of 1861. In all that is material to the present discussion sect. 42, which makes it unnecessary in the indictment to do more than describe the forged writing by any designation by which it may be generally known, is a repetition of 14 & 15 Vict. c. 100, s. 5; and sect. 44, which makes it unnecessary to specify or prove more than an intent to defraud generally, is a repetition of part of sect. 8 of the same Act, whilst the rest of the same sect. 8 which applies the same rule to indictments for obtaining money by false pretences has been separately re-enacted in the Larceny Act (24 & 25 Vict. c. 96), s. 88. In sect. 42 the expression used is “any instrument,” and in sect. 44 “any instrument whatsoever.” My own experience in drawing indictments goes back to 1851; and in my experience since that time it has been the practice to treat sects. 42 and 44 as applying to forgeries at common law as well as to statutory forgeries.” Inquiry has satisfied me that the experience of others widely conversant with the subject agrees with my own. The phrase used in sect. 38, under which the present question arises is, “any instrument whatsoever.” There can be no difference in meaning between this phrase and either of those used in sects. 42 and 44. It would be most unwise to throw a doubt upon the correctness of the interpretation put ever since 14 & 15 Vict. upon the words used in sects. 42 and 44, nor is there the slightest ground for doing so, and the only question is, whether there is any more reason for restricting the meaning of “instrument” in sect. 38 than there is in those sections. I can see none. It seems to me obvious that the words “instrument,” “document,” and “writing” have not been selected for any particular logical reason to be used in any particular section, and that whether they are to have a restricted or a general sense

must be gathered from the nature of the particular enactment. I have pointed out some sections where the context does necessarily restrict the application; but even there it is rather the application than the meaning of the term adopted that is so narrowed. Sect. 38 provides that, "whosoever with intent to defraud shall demand, receive, or obtain, or cause or procure to be delivered or paid to any person, or endeavour to receive or obtain, or to cause or procure to be delivered or paid to any person any chattel, money, security for money, or other property whatsoever, under, upon, or by virtue of any probate, or letters of administration, knowing the will, testament, codicil, or testamentary writing on which such probate, or letters of administration shall have been obtained to have been forged or altered, or knowing such probate or letters of administration to have been obtained by any false oath, affirmation, or affidavit shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the court to be kept in penal servitude for any term not exceeding fourteen years and not less than three years, or to be imprisoned for any term not exceeding two years." The essence of this section appears to be that, where property has been obtained not merely by false pretences, but by false pretences into which forgery or its equivalent enters, the offence shall be constituted a felony, and may involve much severer punishment. I cannot see anything in the nature of such a section which should make it necessary or desirable to restrict the application of the word "instrument" to writings of a formal character, and I think it is meant to include writings of every description if false and known to be false by the person who makes use of them for the purpose indicated. The severity of the possible punishment has been appealed to as a reason for restricting the application of the section to documents of a more formal character or documents having in themselves some legal operation. The argument appears to me to have no weight. The section embraces cases involving forgeries which may be of a very heinous nature, such as forgeries of wills or letters of administration. It always involves the commission of one crime by means of another. There is no minimum of punishment, and the limits of discretion are not unreasonable. Theoretically a boy may be sent to penal servitude for five years for stealing an apple, and that though it be his first offence; and the limits of discretion in cases of many offences, whether triable at quarter sessions or at assizes only, are equally large. No violence is done by this construction to the use of the word "instrument." In *Coogan's* case (1 Lea, 449; 2 East P. C. C. 19, s. 43, p. 948) Buller, J. defined forgery at common law as "the making of a false instrument with intent to deceive." Blackstone, J. defines forgery as "the fraudulent making an alteration of a writing to the prejudice of another man's right": (4 Comm. 247). It is plain that in these definitions "instrument" and "writing" are synonymous. East, himself a writer of con-

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siderable authority, defines forgery in one passage as “a false-making—a making *malo animo*—of any written instrument for the purpose of fraud and deceit” (2 Pleas of the Crown, 852); and in another paragraph as “the counterfeiting of any writing with a fraudulent intent whereby another may be prejudiced” (Ib. 861). It is obvious that the writer in these passages treats “instruments” and “writings” as for the present purpose synonymous. For these reasons I am clear that the conviction must be affirmed. I think further that, even if the true construction of the word “instrument” required a more restricted meaning, the telegram in the present case would fall within it. It was a writing which, if accepted and acted upon, would establish a business relation and lead directly to business dealings with another person. It is true that the dealings were of such a nature that they led to no legal rights, and could not be made the foundation of an action; but they were not forbidden by law, and in that sense and to that extent were legitimate. A post-office telegram is issued by a public department in the course of business, and in the present case the telegram appears to me to have sufficient formality, both in its origin and in the use to which it was put, to deserve the name of an “instrument.” The only hesitation I have in saying so is lest it should appear to imply any lingering doubt in my own mind as to the correctness of the wide meaning I have given in the principal part of my judgment to the word “instrument.” I have no doubt or hesitation about the matter, and I notice the second point only because it was argued before us.

LORD RUSSELL, C.J.—This case is not of general importance, it is only of importance with reference to this particular prisoner. He has clearly committed forgery at common law, a misdemeanour under the Telegraph Act, and probably the offence of obtaining money by false pretences. With regard to whether or not he has committed the offence of which he has been convicted, however, though I am not prepared to dissent from the judgment of the majority of the Court, I entertain the doubt which will be referred to by my brother Williams. My brother Mathew authorises me to say that he concurs with the decision of the majority of the Court.

WILLIAMS, J. read the following judgment:—I concur in the opinion that the defendant, on the facts of this case, was guilty of counterfeiting a writing with intent to defraud, and, therefore, of forgery by the common law, but I do not think he was guilty of any statutory forgery, or that the telegram sent falls within the description of any of the written instruments the forgery of which is made felony by 24 & 25 Vict. c. 98; but I propose to make some observations on the question whether the defendant was guilty of an offence within sect. 38 of that statute. This question turns on the meaning, in sect. 38 of 24 & 25 Vict. c. 98, of the words “any forged or altered instrument whatsoever.” Do these words mean any writing whatever, or ought these words

to be read subject to some, and what, limitation? Two possible limitations occur to me: (a) that "instrument" must be read, not as including all writings, but only such writings as contain a contract, order, or legal act of the writer; (b) that "instrument" in sect. 38 means a writing, the forgery of which is made a felonious forgery in the preceding sections. The statute is a consolidating and amending Act relating to indictable offences by forgery—i.e., consolidating and amending the statute law relating to offences which are made forgery by statute. The greater part of the sections are culled from older statutes, and put, as it were, on a statutory file. In construing such sections, I do not think one ought to let the meaning of a word in one section affect the construction in another section unless the sections are plainly connected. As to limiting the word "instrument" to contracts, orders, and legal acts, I do not think that the meaning to be attached to the word in the various sections of the Act affords any guide to the meaning of the Act in sect. 38. The meaning is sometimes the limited meaning, sometimes the wide meaning. The meaning, however, in each case is to be derived from the collocation of the word with the provisions of the particular section. The use of the word "instrument" in this Act, as a whole, does not in any case seem to afford any assistance. I mention this because undue stress seems to me to be attached to the use of the word "instrument" in sect. 42. I think one must construe the words "any . . . instrument whatsoever" in sect. 38 in reference to their collocation in sect. 38, and not in reference to the use of the word "instrument" in other sections of the Act; but applying this guide of construction, I find nothing to lead me to the conclusion that "instrument" in that section is limited to writings containing a contract or legal act. Secondly, as to limiting "any instrument . . . whatsoever" to writings, the forgery of which is made felony by the preceding sections, it will be observed that the first thirty-eight sections deal with the forgery of specific instruments, writings, or matters, or with matters connected with each such offence—each group of sections is introduced with a heading, e.g., "As to forging deeds, wills, bills of exchange, &c." Sect. 38 itself is headed, "As to demanding property upon forged instruments." The sections following sect. 38 are headed, "As to other matters." Do the words "by virtue of any forged or altered instrument whatsoever" in sect. 38 mean any of the instruments dealt with in the preceding sections? Do they refer exclusively to the offences created by the Act? I am inclined to think that this is the true construction, remembering that we are construing a penal statute. The subject of the Act up to sect. 38 has been statutory forgery, i.e., felonious forgery. This section creates an offence with reference to forged instruments. Does it not mean any instrument being one of those of which the forgery is made felony by this Act? One reason for attributing

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this meaning is that the offence of demanding property upon forged instruments is made felony. This is quite reasonable if the forgery of the instrument itself with intent to defraud is made felony; but it seems unreasonable in a case where the forgery with intent to defraud of the writing itself is not felony, when what may be the graver offence is not felony. On the whole, I think that sect. 38 is the supplement of the preceding sections, and that "instrument" must be limited to instruments (using the word in its widest sense), the subject of the preceding sections. But, although this is the inclination of my mind, I am not prepared to differ if the majority of the judges think otherwise.

*Conviction affirmed.*

Solicitor for the prosecution, *The Solicitor to the Post Office*.  
Solicitor for the prisoner, *Richard Riley*, of Blackburn.

## QUEEN'S BENCH DIVISION.

*Friday, Feb. 14, 1896.*

(Before LINDLEY and KAY, L.JJ.)

PHILLIPS v. EVANS. (a)

*Excise—Dog licence—Certificate of exemption—Refusal by Commissioners to grant certificate—Jurisdiction of justices to review decision of Commissioners—Offences of trifling nature—Customs and Inland Revenue Act, 1878 (41 & 42 Vict. c. 15), s. 22—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 16.*

*The respondent was summoned for keeping a dog without having a licence or a certificate of exemption under sect. 22 of the Customs and Inland Revenue Act, 1878. He had previously made an application under that section for a certificate of exemption, but the Commissioners of Inland Revenue had refused to grant such certificate, on the ground that, in their judgment he was not entitled to receive it. When the case came before the justices they admitted evidence on behalf of the respondent to show that he was entitled to receive a certificate of exemption under the section, and, although the respondent had neither a licence nor a certificate of exemption, they refused to convict him on the*

(a) Reported by W. W. ORR, Esq., Barrister-at-Law



ground that he was a person who was entitled to receive a certificate of exemption, and they were of opinion that under the circumstances the offence was of so trifling a nature that it was inexpedient to inflict any punishment:

*Held*, (1) that the justices had no jurisdiction to review the decision of the Commissioners, and had no power, therefore, to consider whether the respondent was or was not entitled to such certificate of exemption; and (2) that, as the respondent had neither a licence nor a certificate of exemption, the justices could not in point of law have found that the refusal to pay the tax was a "trifling offence" within the meaning of sect. 16 of the Summary Jurisdiction Act, 1879, and that they were therefore bound to convict.

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CASE stated by justices of the peace for the county of Cardigan, sitting at Tregaron.

The respondent appeared before the justices on the 30th day of July, 1895, to answer an information exhibited by the appellant, an officer of Inland Revenue, prosecuting by order of the Commissioners of Inland Revenue, for that the respondent did on the 12th day of June, 1895, keep a dog without a licence.

The justices dismissed the information, but stated the following case:—

(1.) The proceedings upon the information were for recovery of the penalty of 5*l.* imposed by sect. 8 of the Act 30 & 31 Vict. c. 5, as altered and amended by the Act 41 & 42 Vict. c. 15, in respect of the keeping of a dog without the Excise licence required for the keeping thereof. The present duty on a licence to keep a dog is imposed by sect. 17 of the Act 41 & 42 Vict. c. 15.

(2.) It was proved or admitted that the respondent kept a dog on the 12th day of June, 1895, and that he had not an excise licence in force to keep a dog, or a certificate of exemption obtained under the provisions of sect. 22 of 41 & 42 Vict. c. 15.

(3.) That in the month of January in the present year respondent had made an application for a certificate of exemption, and delivered the declaration required by sect. 22 (2) of the Act 41 & 42 Vict. c. 15, in order to obtain such certificate, and that the Commissioners of Inland Revenue had refused to grant him a certificate of exemption from duty in respect of a dog on the ground that in their judgment he was not entitled to receive such certificate.

(4.) Evidence was tendered before the justices on behalf of the respondent to show that he was a person entitled under sect. 22 of the last-mentioned Act to receive a certificate of exemption. Thereupon an objection was taken on behalf of the appellant to the reception of such evidence on the ground that the justices had no jurisdiction to try the question whether the respondent was entitled to such certificate or not, and that such evidence is wholly irrelevant. In support of this contention the



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case of *Graham v. Haig* (58 J. P. 835) was cited. The justices overruled the objection and admitted the evidence. Counsel for the appellant thereupon stated that he was instructed not to cross-examine the witness called to establish the respondent's right to receive a certificate of exemption under the said section and he did not do so. The witness then stated on oath that respondent kept two cows and one horse, that he also kept sheep in the winter, that he holds five or six acres of land, that he has to take his cattle some distance along the main road to a river for water having no water on his own land, and that he is a farmer.

It was admitted on behalf of the appellant, that the Commissioners of Inland Revenue had acknowledged the right of the respondent to a certificate of exemption by granting to him such certificate for several years immediately preceding the present year, and it was also proved that the respondent's farm was the same in extent, and that he kept the same number of cattle and sheep during the present year as in the years he received certificates of exemption.

The justices found: (1) That the respondent did keep a dog as alleged in the information, and that he had neither a licence nor a certificate of exemption; (2) that the respondent was a person who, under the provisions of sect. 22, was entitled to receive a certificate of exemption, and, though the charge might in the absence of such certificate of exemption, have been considered as proved, they were of opinion, under the circumstances stated, that the alleged offence was of so trifling a nature that it was inexpedient to inflict any punishment, and they therefore dismissed the said information.

The questions for the opinion of the Court were: (1) Whether, upon the facts as found, the decision of the justices was correct in point of law; (2) whether as the respondent had neither a licence to keep a dog nor a certificate of exemption in respect of a dog, the justices were bound to convict him of the offence charged in the information.

Sir R. B. Finlay, S.-G. (*Danckwerts* with him) for the appellant.—The Commissioners in refusing to grant a certificate of exemption had decided the question whether the respondent was or was not entitled to the certificate. That being so the justices had nothing to do with the matter, and it was not open to them to receive evidence to show that the Commissioners had wrongly refused to grant the certificate of exemption, or to inquire whether the Commissioners were right or wrong in the view they took as to this dog having been used solely for tending sheep or cattle. If the respondent is entitled to exemption at all, he is entitled to such exemption only in a particular way, namely, by obtaining a certificate from the Commissioners; and whether he gets that certificate or does not get it, the decision of the Commissioners on the question whether he is entitled to such certificate or not cannot be reviewed by the justices, and they have no

jurisdiction to entertain the question. The Commissioners, and not the justices, are made the judges in such a case: (*Graham v. Haig*, 58 J. P. 835.) [He was stopped as to this point.] The second point arises on the finding of the justices that the alleged offence was of so trifling a nature that it was not expedient to inflict any punishment, and they therefore dismissed the information. We contend that this is a matter which they cannot take into account from that point of view, and we say that sect. 16 of the Summary Jurisdiction Act, 1879, has no application in a case of this kind. The discretion to be exercised by the Court under that section must be a judicial discretion, and if it is not open to the justices to review the decision of the Commissioners for the purpose of dismissing the charge apart from this section, they cannot, under colour of the section, do the very same thing, by saying "we come to the conclusion that the Commissioners were wrong in refusing a certificate, and for that reason we shall dismiss the information under this section." This raises a most important question, because if it is open to the justices to take this line, they can in every case review the decision of the Commissioners, as the only circumstance on which they arrive at this conclusion is that in their opinion the Commissioners were wrong in refusing the certificate. The effect of this decision would be that the Commissioners would get no duty at all, and in some districts the dog tax would be repealed altogether. It was a question of law whether the justices were entitled to enter into any such line of defence, and it was contended that they were not. They could not avoid a conviction by going into the question whether a certificate ought to have been granted. There was only one case in which the exercise of the power of the justices under the 16th section had been considered, the case of *Banton v. Davies* (66 L. T. Rep. 192; 56 J. P. 294), where the decision was to the effect stated. The question the justices really state here was, whether the Court should think that they were justified in treating it as a trivial matter and dismissing it altogether, because they thought the Commissioners were wrong in their decision. It was submitted that they were wrong in that view, and that the case should be sent back with a direction that there should be a conviction, but that the penalty should be mitigated to a nominal sum if the respondent paid the duty, in which case there should be a discretion to them as to the penalty. The question, which was one of vast importance, was, whether the dog tax was enforceable in this district or not, because if the tax might be escaped in this way in this case it might be escaped in any number of cases and in any number of informations against the same person. He referred to the case of *James v. Nicholas* (59 J. P. 292) as to the effect of a certificate of exemption.

The respondent did not appear.

LINDLEY, L.J.—Sect. 22 of the 41 & 42 Vict. c. 15, is not a very happily worded section, but it is obvious that the meaning is that

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a person who keeps a dog without a licence must produce a certificate or pay the licence, having incurred the penalty. But the section is not happily worded for many reasons, because the Act says that upon delivering a declaration the person shall be entitled to receive a certificate. Supposing the Commissioners do not believe the declaration, the Act still says that he shall be entitled to the certificate of exemption. The production of this certificate is obviously an important thing in the view of this section. First of all, we find that the certificate is to be dated in order to show the date, and in the next place, it is to be produced when required, as is obvious from the subsequent clause of the section. I think, therefore, although the section is unskilfully worded, that the only possible meaning of it is, that if the person does not produce a certificate of exemption he must pay. The second point is to my mind more difficult than the other, because it will certainly not be right for us sitting here to encourage appeals from the refusal of magistrates to convict in the face of the very strong language of sect. 16 of the Summary Jurisdiction Act 1879. That section runs thus: "If upon the hearing of a charge for an offence punishable on summary conviction under this Act, or under any other Act, whether past or future, the court of summary jurisdiction think that though the charge is proved the offence was in the particular case of so trifling a nature that it is inexpedient to inflict any punishment, or any other than a nominal punishment—(1) The Court, without proceeding to conviction, may dismiss the information, and, if the Court think fit, may order the person charged to pay such damages, not exceeding forty shillings, and such costs of the proceeding, or either of them, as the Court think reasonable." The justices have done two things. In the first place, they find that the respondent did keep a dog, and that he had neither a licence nor a certificate of exemption; and, in the second place, they find that the respondent was a person who was entitled to receive a certificate of exemption, &c., and they were of opinion that under the circumstances the alleged offence was of so trifling a nature that it was inexpedient to inflict any punishment, and they therefore dismissed the information. When we come to look at the facts, the words "we therefore dismissed the information," as I understand the matter, mean this: "We thought there was no offence, and we thought, if we were wrong in that, it was of so trifling a nature that we should dismiss it." My difficulty in the case arises from the language of sect. 16, which I have just read. It appears to me that if the magistrates had said: "Well, you pay your licence and then we shall consider it an offence so trivial that we will not convict," I do not think we could have interfered. I certainly should have felt great difficulty in interfering, and should not have seen my way to do it. But then those supposed circumstances are precisely the circumstances which did not exist, because what the magistrates have done is this: they have decided it to be a

trifling matter for a man to say he will not pay the tax, and they dismiss the information when he ought to pay the tax. I do not think it is possible as a point of law to call that a trifle, and upon these grounds I am prepared to answer the questions thus: That, as to the first point, upon the facts found the decision was incorrect in point of law; and that as to the second point, "whether as the respondent had neither a licence to keep a dog nor a certificate of exemption the justices were bound to convict him of the offence charged in the information," I say, yes, unless he paid his licence, which, according to the case, he did not do. I do not think that the magistrates had jurisdiction to let a man off paying the tax for dogs. If he did not choose to pay they were bound to convict. If he paid they had ample discretion.

KAY, L.J.—With regard to the first point, I do not think that the justices are entitled to be a tribunal for reviewing the decision of the Commissioners who have refused a certificate of exemption. I do not see how they really could be so, and therefore I think that in this case they ought to have convicted. The result of the finding of the justices seems to me to be this: "We think this man was entitled to a certificate of exemption; he has proved a number of facts before us which induce us to think that the Commissioners ought to have granted him a certificate of exemption." In saying that it seems to me they went completely beyond their jurisdiction. In the first place, they are not made the judges of that matter by the Act of Parliament. That is for the Commissioners to decide. And in the second place, it does not in the least follow that the evidence before them was the evidence which was before the Commissioners, upon which the Commissioners refused to grant a certificate of exemption. Then again, therefore, it would be an absurd thing to say that they can sit in judgment upon the Commissioners, upon different evidence possibly, and find that the Commissioners were wrong. To my mind they completely exceeded their jurisdiction in entertaining that question at all. With regard to the second question, I think the true meaning of the finding of the justices is this: they say that under the circumstances aforesaid, even if the respondent had not a certificate of exemption, and was therefore *prima facie* liable to be convicted, they were of opinion that the offence was a trifling one. The circumstances aforesaid are that the Commissioners ought to have given him a certificate of exemption, and did not; and these are the only possible circumstances to which that part of the finding can allude. It comes to this: "We think the Commissioners ought to have given him a certificate of exemption and they have not; he comes before us without having paid the duty, refusing to pay the duty, and without having any licence or certificate of exemption. If we are bound to convict, still we say that for the reasons we have given the offence is a trifling one." I cannot conceive that any men in their senses would say it is a trifling offence that a man

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should keep a dog and should not have a licence or certificate of exemption, and then say, "I will not pay the duty." That cannot be trifling. "Trifling," on the face of the case, means that it is trifling because the Commissioners ought to have given a certificate of exemption. In that state of things we are asked, were the justices right in point of law in determining the question that the respondent was entitled to a certificate of exemption? In my opinion clearly they were wrong in point of law. Then as to the second question, whether, as he had neither a licence nor certificate of exemption, they were bound to convict. Certainly they were bound to convict him unless the case comes clearly within the discretion that they have under the Summary Jurisdiction Act, 1879. Does it come within that discretion? Their own statement seems to me to show that it does not. Here is a man who says, "I have not a licence, I have not a certificate of exemption, and I will not pay the duty." It is not possible to say that that is a trifling offence. This proceeding is to compel him to pay the duty, and it is obvious that what the magistrates meant was that the offence was trifling because he was really not liable to pay the duty. Upon that question of law they were wrong. Therefore it seems to me that the two questions must be answered, that they were wrong in point of law, and that they ought to have convicted.

*Appeal allowed. Case remitted to the justices for the purpose of convicting the respondent, with the opinion of the Court thereon that they could not in point of law have found the refusal to pay the tax a trifling offence, but were bound to convict the respondent, he having neither a licence nor a certificate of exemption.*

Solicitor for the appellant, *The Solicitor of Inland Revenue.*



## QUEEN'S BENCH DIVISION.

*Jan. 27 and March 28, 1896.**(Before HAWKINS and KENNEDY, JJ.)***REG. v. HORACE SMITH (Metropolitan Police Magistrate) and  
KERR. (a)***Adulteration of food—Prosecution—Proper inspector and analyst to take proceedings—Jurisdiction of magistrate—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), ss. 20, 27.**In proceedings against offenders under the Sale of Food and Drugs Acts inspectors and analysts cannot act for the purpose of taking or analysing samples or otherwise putting the Acts into operation for any district other than the district for which they have been appointed.**A dairy company were prosecuted in the C. Police-court under sect. 6 of the Sale of Food and Drugs Act, for selling adulterated milk. The charge was dismissed on the ground that they had purchased with a written warranty under sect. 25. An information was then preferred in the same court by the same inspector, and upon the same certificate of analysis, against the vendor, under sect. 27, for giving a false warranty in writing to the dairy company. The premises, both of the vendor and the company, were situated outside the district of the C. court, and neither the sale by the vendor to the dairy company, nor the warranty, nor the delivery of the milk by the vendor to the company, took place within the district of the C. court, and no sample was taken at the place of delivery to the dairy company or during the course of such delivery, and neither the inspector who preferred the information, nor the analyst who gave the certificate, was appointed to act for the district where the milk was sold or where it was delivered to the purchaser :**Held, that there had been no violation of the Acts by the vendor within the district of the C. court, and that that court had therefore no jurisdiction to deal with the information.*

**R**ULE calling on Horace Smith, metropolitan police magistrate sitting at Clerkenwell Police-court, and David Kerr, a farmer of Brook Farm, near Oakham, in Rutlandshire, to show cause why the magistrate should not proceed to hear and determine two informations preferred by Patrick Mernagh, an inspector of nuisances for the parish of St. Mary, Islington, against the said David Kerr, charging him for that he did on the 14th



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and 26th days of June, 1895, give false warranties in respect of one churn of milk sold on each of those days by him to the Manor Farm Dairy Limited, contrary to sect. 27 of the Sale of Food and Drugs Act, 1875.

The facts are fully stated in the judgment of the Court.

*Toller* showed cause.

*Macmorran*, Q.C. in support of the rule.

*Cur. adv. vult.*

March 28.—HAWKINS, J. read the judgment of the Court as follows :—This matter was argued before myself and my brother Kennedy, who has read the judgment I am about to pronounce, and authorises me to say that he entirely concurs in it. [His Lordship having read the terms of the rule proceeded :] Saving the dates and that there was alleged to be less water added to the milk in the second case, the two cases are precisely similar in the material facts. I have dealt, therefore, with the first in order of time only. In June, 1895, a contract was in existence for the sale and delivery of milk by the Manor Farm Dairy, whose premises are at East Finchley, in Middlesex, to the committee of the Great Northern Central Hospital at their premises in the Holloway-road, in the parish of St. Mary, Islington. On the 15th day of June, Patrick Mernagh, an inspector of nuisances duly appointed for the said parish of St. Mary, Islington, procured at the said hospital premises, under the powers of sect. 3 of the Food and Drugs Amendment Act, 1879, at the place of delivery there, a sample of milk which was then in course of delivery under the said contract. That sample was duly submitted to the public analyst for the said parish for analysis, and he, on the 22nd day of June, certified “that the said sample contained 14 per cent. of added water.” Upon this certificate an information was preferred, under sect. 6 of the Sale of Food and Drugs Act, 1875, by the said inspector against the dairy company, charging that they had sold to the prejudice of the hospital committee, the purchasers, the said milk, the same not being of the nature, substance, and quality demanded by such purchasers, in that it was adulterated to the extent of 14 per cent. of added water. This information came on to be heard on the 8th day of July, by Mr. Bros, the then sitting magistrate at the said police-court, and on that hearing the dairy company proved to the satisfaction of the magistrate that they had purchased the milk as the same in nature, substance, and quality as that demanded of them, and with a written warranty to that effect; that they had no reason to believe at the time they sold it that it was otherwise; and that they sold it in the same state as when they purchased it. Upon this ground the prosecution against the dairy company was dismissed under sect. 25 of the same Act. The said David Kerr was the vendor of the said milk to the dairy company. The churn containing it was sent by him from the Oakham Railway Station on the 14th day of June, addressed to the dairy company, with a label attached containing such a

written warranty as above mentioned, and it was delivered to the dairy company at the railway station at East Finchley, outside the parish of St. Mary, Islington, and also outside the district subject to the jurisdiction of the Clerkenwell Police-court. After the dismissal of the case against the dairy company an information was preferred by the same inspector of nuisances against the said David Kerr under sect. 27 of the Food and Drugs Act, 1875, charging him with giving a false warranty in writing to the dairy company in respect of the said churn of milk so sold and delivered by him to the dairy company. This information came on for hearing before Mr. Horace Smith, the sitting magistrate at the Clerkenwell Police-court, on the 20th day of July, but he declined to hear and determine it, on the ground that he had no jurisdiction so to do. It is beyond doubt that in fact neither the sale nor warranty, nor the delivery to the dairy company, was made within the limits of the Clerkenwell Police-court's district, and it was not suggested that any sample was taken of the milk at the place or during the course of delivery to the dairy company. Unless some enactment can be found altering the general rule of law that an offence must be prosecuted before a tribunal having jurisdiction to entertain it within the county or place in which it has been committed, the magistrate at the Clerkenwell Police-court had no jurisdiction over it. It is said, however, that such an enactment is to be found in sect. 20 of the Act of 1875. I am not of that opinion. Before I discuss that enactment, I desire to point out one or two matters essential to be borne in mind—namely, the offence charged against the dairy company was of a totally different character from that preferred against Kerr; that against the dairy company was framed under sect. 6 of the Act of 1875 for selling to the prejudice of the hospital committee milk which was not of the nature, substance, and quality of the article demanded by the purchasers. Under the circumstances stated no such offence could possibly be charged against Kerr, for he neither sold nor delivered any milk to the hospital committee. The information against Kerr was framed under sect. 27 of the Act for giving a false warranty in writing to his purchasers, the dairy company, in respect of the milk sold by him to them. Let me now call attention to the words of sect. 20 of the Act of 1875: "When the analyst, having analysed any article, shall have given his certificate of the result, from which it may appear that an offence against some one of the provisions of this Act has been committed, the person causing the analysis to be made may take proceedings for the recovery of the penalty herein imposed for such offence before the justices in petty sessions assembled having jurisdiction in the place where an article or drug sold was actually delivered to the purchaser"—I think that this part of the Act must be read as if the words "or the sample of milk was procured as mentioned in sect. 3 of the Act of 1879" were

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inserted here—"in a summary manner." It has been held that the certificate of the analyst is a condition precedent to a prosecution under this section (see *Peart v. Barstow*, 44 J. P. 699, and *Smart v. Watts*, 71 L. T. Rep. 768; (1895) 1 Q. B. 219), and it seems to me not open to question that the words "When the analyst, having analysed any article," at the commencement of the section, must be interpreted to mean the official analyst appointed under sect. 10 as analyst of all articles of food and drugs sold within the district for which he is appointed, and the inspector of nuisances appointed for any district or place can only require the analyst (if there be one) for that district to analyse the suspected samples, and give his certificate under sect. 13. We take it, therefore, that an inspector of nuisances could neither insist upon procuring a sample in a district for which he is not appointed, nor could an analyst not appointed to act for such district give any valid and effectual certificate of the result of his analysis under sect. 13. Sect. 18, which, with reference to the schedule to the Act, prescribes the form of the certificate, evidently contemplates an analysis by the local analyst of the article analysed as it is at the time it is delivered to him. Then comes sect. 20 under discussion, and, immediately following it, sect. 21, which enacts that at the hearing of the information in such proceeding (*i.e.*, the proceedings mentioned in sect. 20) the production of the certificate of the analyst shall be sufficient evidence of the facts therein stated, unless the defendant shall require that the analyst shall be called as a witness. All these provisions point, in our opinion, to the intention of the Legislature to provide for local inspectors with power to obtain by local analysts analyses of questionable samples of articles of food or drugs sold within their districts, and to provide for the prosecution of offenders against the Act before justices of the peace having jurisdiction in the place where adulterated goods are actually delivered to the purchasers; but it never could have been in the contemplation of the Legislature to give justices jurisdiction to deal with persons offending against the Acts in other parts of the United Kingdom out of their jurisdiction. There are certainly no words expressive of such an intention to be found in sect. 20 or in any other section of the Acts either of 1875 or 1879. In this case no Act tending to establish a violation by Kerr of the statutes I have discussed occurred within the jurisdiction of the Clerkenwell Police-court. The warranty was made at Oakham, the delivery by Kerr to the dairy company at Finchley. There was no sample of the milk taken by any inspector in the course of its delivery to the dairy company, and therefore there could be no such sample to analyse, and, even had there been, no analysis was made by any analyst appointed for the district of Finchley, and the analysis of a sample taken after the milk had been actually delivered to and received by the dairy company in a district where Kerr never had any control over the milk, and of which he had no

knowledge, could not affect him, and the certificate given as the result of the analysis of such a sample could not, in our opinion, be any evidence as against Kerr. Moreover, though the certificate may have been evidence as against the dairy company that the sample taken in St. Mary's, Islington, while in the course of delivery by them to the hospital was adulterated, there was nothing on it from which it appeared that the offence of giving a false warranty was committed by the defendant Kerr at Oakham or anywhere else. Under all these circumstances, we are at a loss to see any ground for the contention that the Clerkenwell magistrate had any jurisdiction over the information against Kerr. It is only for such offence as appears by the certificate that any prosecution can be instituted under sect. 20. The rule, therefore, must be discharged. I wish, before concluding, to observe, with regard to the form of the certificate, that the analyst's duty is merely to analyse and report the result of the analysis, and he has no right, as I think, to report extraneous facts unconnected with the analysis, and if he does so, his certificate would, in my judgment, be inadmissible as evidence of such facts. In so far as it states in due form the result of the analysis, the certificate is sufficient for the justices to act upon, unless the defendant requires the analyst to be called as a witness, or unless other evidence is adduced before the justices which induces them to come to the conclusion that it is incorrect. The expression used by me in my judgment in *Fortune v. Hanson* (1896) 1 Q. B. 205, that the certificate is "practically conclusive" was intended only to convey the impression I entertained that in the vast majority of cases brought before justices no other evidence was offered of the impurity of the article, and to point out the great importance of insisting upon its containing all the material details of the analysis to enable the justices themselves to form a judgment on the question before them. Had I intended to do more I should have qualified my expression by what I have now stated, and I desire for myself to call attention to the fact that the certificate in this case is very like the certificate we held to be bad in that case of *Fortune v. Hanson* (*ante*, p. 258; 74 L. T. Rep. 145; (1896) 1 Q. B. 202), but it is not necessary to decide the point. The rule must be discharged with costs.

*Rule discharged.*

Solicitor for the prosecutor, *Stanley Hoare*.

Solicitor for the defendant, *P. G. Robinson*.

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## QUEEN'S BENCH DIVISION.

*Monday, March 23, 1896.*

(Before LAWRENCE and COLLINS, JJ.)

REG. v. WEBB AND OTHERS (Justices) AND GROVE. (a)

*Bastardy—Summons—Service—"Last place of abode"—Respondent out of jurisdiction—Bastardy Act, 1872 (35 & 36 Vict. c. 65), ss. 3, 4.*

*A summons against the respondent as the alleged father of a bastard child was served upon him, under sect. 4 of the Bastardy Act, 1872, by being left at his father's house in England, as his last place of abode. At the date of such service the respondent was in America, where he had no fixed place of abode, but wandered about from place to place begging his way.*

*Held, that the house of the respondent's father was the respondent's "last place of abode" within sect. 4.*

*Held, further, that notwithstanding his absence from England the summons might be served upon the respondent by being left at his last place of abode.*

*Dictum of Lord Selborne, L.C., in Berkley v. Thompson (10 App. Cas. 45) not followed.*

**T**HIS was a rule *nisi* to certain of the justices of Staffordshire to show cause why a writ of *certiorari* should not issue to bring up and quash an affiliation order made by them upon the respondent, one Hotchkiss.

On the 31st day of March, 1895, Caroline Grove was delivered of a child of which she alleged that the respondent was the father. On the 9th day of April she took out a summons against him under sect. 3 of the Bastardy Act, 1872, which summons, in the absence of the respondent, was left on the 10th at the Sun Inn, Cradley, the house of the respondent's father, where the respondent had resided up to the 3rd day of April. On the 3rd day of April he left the Sun Inn and proceeded to America, and a letter was put in dated the 16th day of May, and admitted to be in the respondent's handwriting, and bearing the Philadelphia post mark, in which he described how, in America, he had been obliged from want of means to sleep in the fields.

By sect. 4 of the Bastardy Act, 1872, after the birth of a bastard child, on the appearance of the person summoned under sect. 3 as the alleged father, "or on proof that the summons was duly

(a) Reported by G. H. GRANT, Esq., Barrister-at-Law.



served on such person or left at his last place of abode six days at least before the petty sessions," the justices after hearing evidence may make an order.

On the facts above stated the justices held that the Sun Inn, Cradley, was the respondent's last place of abode, and that the summons having been left there had been properly served; and being satisfied that the respondent was the father of the child, made an order upon him for the payment of 3s. per week for its maintenance.

The Court having granted a rule *nisi*,

*T. W. Ohitty* showed cause.—The justices were right in holding that the summons was left at the respondent's last place of abode. The facts show that he had never acquired another place of abode after he left the Sun Inn for America, and the justices doubted whether he had ever gone there at all. At any rate, it is immaterial that the respondent was not in this country if he had not acquired a place of abode elsewhere: (*Reg. v. Damarell*, L. Rep. 3 Q. B. 50; *Reg. v. Farmer*, 65 L. T. Rep. 736; (1892) 1 Q. B. 367). [He was stopped by the Court.]

*Ernest Pollock* in support of the rule.—The summons was not properly served on the defendant within sect. 4. *Reg. v. Damarell* (*ubi sup.*) was decided in 1867, long prior to the Act of 1872. In *Berkley v. Thompson* (10 App. Cas. 45), Lord Selborne, L.C. (at p. 49) expressly says that the presence of the putative father in England is necessary for the jurisdiction to attach; and this dictum is approved by Kay, L.J. in *Reg. v. Farmer* (*ubi sup.*). Therefore, if the man has left England, the summons cannot be served upon him by being left at his last place of abode in this country.

*Ohitty* in reply.—The dictum of Lord Selborne in *Berkley v. Thompson* (*ubi sup.*) was not necessary to the decision in that case, and if it is adhered to many decisions will have to be overruled. In *Berkley v. Thompson*, however, the defendant had actually a place of abode out of the jurisdiction, viz., in Scotland. Here the magistrates found that the respondent had no place of abode in America. His last place of abode was therefore in England, and there is nothing in the section to imply that the defendant himself must be in England. If it were so, the remarks of Lord Esher, and of Lopes, L.J., in *Reg. v. Farmer*, that it is material to inquire into the defendant's motives for leaving the country, would be irrelevant.

LAWRANCE, J.—I think this rule must be discharged. The question before us arises under sect. 4 of the Bastardy Act, 1872, which provides that after the birth of a bastard child, on the appearance of the person summoned as the alleged father, or on proof that the summons was duly served on such person, or left at his last place of abode six days at least before the petty session, the justices, after hearing evidence, may make an order upon the alleged father. Now, the facts are that the respondent was living at the same place as the mother of the child up to the

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time of the birth, and then on the 3rd day of April he left for America. On the 9th the mother applies for a summons, and on the 10th the summons is sought to be served by being left at what is supposed to be the respondent's last place of abode, namely, his father's house. The first question is, what was the respondent's last place of abode. Now, the evidence shows that he went to America, and Mr. Pollock was obliged to contend that if he lived elsewhere at all that would give him another place of abode. In my judgment that is not so. The evidence is that in America he had no place of abode in the ordinary sense, and went about begging his way, and that is confirmed by a letter from himself of the 16th day of May. The question is whether, at the time this summons was served, his father's house was his last place of abode. It seems to me that the judgments in *Reg. v. Farmer* (*ubi sup.*) place the matter beyond doubt. In that case the respondent had actually a residence in America, but Lord Esher, M.R., and Lopes, L.J., in the clearest way say that if the respondent had not had a residence there his last place of abode would have been his father's house in England. In this case the evidence is clear that the respondent had no residence in America or anywhere else except his father's house, and therefore I am of opinion that that was his last place of abode. As regards the dictum of Lord Selborne in *Berkley v. Thompson* (*ubi sup.*), to the effect that the respondent's presence in England is necessary to found jurisdiction under the section, it is enough to say that that dictum was not necessary to the decision in that case, and that it would stultify the whole of the argument and the judgments in *Reg. v. Farmer*.

COLLINS, J.—I am of the same opinion. The question is whether the summons was duly served upon the respondent by being left at his last place of abode. Now, it seems clear that it was left at his last place of abode, unless he can show that he has in the meantime acquired another place of abode. As to that the evidence satisfies me that he had not acquired one in America on the 10th day of April, and therefore, at that time, at any rate, his father's house, where the summons was served, was, in my judgment, his last place of abode within the meaning of the section. But another point has been raised which, if successful, would make a decision on the first point immaterial. It is said that in point of fact the respondent was out of the jurisdiction, and we are referred to a dictum of Lord Selborne in the case of *Berkley v. Thompson* (*ubi sup.*), which goes the length of making the presence of the alleged father in this country necessary to found any proceedings against him; and that dictum receives approval from Kay, L.J. in *Reg. v. Farmer*. It appears to me, however, that in sect. 4 of the Act we have a distinct provision authorising the service of the summons by leaving it at the respondent's last place of abode quite irrespective of the place where the respondent may happen to be at the time. Then there is also a provision in sect. 3 for obtaining a summons against the

alleged father within twelve months after his return to England. But that provision does not appear to me to be inconsistent with the clear language of sect. 4, but only to regulate the time within which a summons may be applied for. Indeed, I think the *ratio decidendi* in *Reg. v. Farmer* really determines this point. Lord Esher, M.R. says in that case: "If the respondent went to America with the intention of returning, or for the mere purpose of avoiding service, I should say he had no place of abode in America. In such a case it would be true to say that his last place of abode was his father's house." I infer from these words that the Master of the Rolls would have held that, if the respondent had not, in fact, in that case acquired another place of abode in America, the summons would have been properly served upon him by being left at his place of abode in England, although he had gone abroad. And Lopes, L.J. says: "I think, on the evidence, that his father's house was not his last place of abode at the date of the summons, but his brother's house in America. I agree that the case would be different had it been made out that he went away merely to avoid service, or merely for a temporary purpose." Those words assume, or rather they decide, that proceedings might be taken under sect. 4 against a person who was out of England. It is further to be remembered that the dictum in *Berkley v. Thompson* was made in regard to a case in which the question was whether personal service could be effected out of the jurisdiction. This is quite a different question, and it appears to me, therefore, that, having regard to the wording of sect. 4, and the judgments delivered in *Reg. v. Farmer*, the dictum of Lord Selborne ought not to affect our decision in this case. The rule will therefore be discharged.

Solicitors for the justices, *Rowcliffes, Rawle, and Co.*, for *Bernard King*, Stourbridge.

Solicitors for the respondents, *C. Robinson and Co.*, for *Waldron*, Brierley Hill.

Solicitor for the mother, *W. Wainwright*.

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## QUEEN'S BENCH DIVISION.

*Friday, May 1, 1896.*

(Before Lord RUSSELL, C.J. and WRIGHT, J.)

REG. v. SLADE (Metropolitan Magistrate) AND ANOTHER; *Ex parte*  
ROBINSON. (a)*Nuisance—Overcrowding in a house—"Premises"—"Inmates"*  
*—Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 2.*

*R. was the chief officer in charge of a Salvation Army Shelter. He was summoned by the local sanitary authority, under sect. 2 of the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), for refusing to abate a nuisance caused by so overcrowding the shelter as to be injurious or dangerous to the health of the inmates, and the magistrate made an order for abatement. In the notice requiring the abatement, in the summons and in the order, the shelter was described not as a "house" (the words of the Act) but as "premises." R. obtained a rule nisi for a certiorari on the grounds: (1) That "house" is not mentioned in the notice, summons, or order, and premises are not a house; and (2) that the persons proved to have been at the premises in question were not "inmates" within the Act:*

*Held, that the rule should be discharged.**Reg. v. Mead (59 J. P. 150) approved.*

**R**ULE nisi to a metropolitan magistrate and the Vestry of St. George's, Southwark, to show cause why a writ of *certiorari* should not issue to remove an order of the magistrate made under sect. 2 of the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), and why the said order when returned should not be quashed.

The provisions of the Public Health (London) Act, 1891, referring to the point in dispute are as follows:

Sect. 2.—(1.) For the purposes of this Act: (a) Any premises in such a state as to be a nuisance or injurious or dangerous to health; (e) Any house or part of a house so overcrowded as to be injurious or dangerous to the health of the inmates, whether or not members of the same family; (g) Any factory, workshop, or work-place which is a factory subject to the provisions of the Factory and Workshop Act, 1878, relating to cleanliness, ventilation, and overcrowding and . . . is so overcrowded while work is carried on as to be injurious or dangerous to the health of those employed therein, shall be nuisances liable to be dealt with summarily under this Act.

Sect. 4.—(1.) On the receipt of any information respecting the existence of a nuisance liable to be dealt with summarily under this Act the sanitary authority shall,

(a) Reported by J. A. STRAHAN, Esq., Barrister-at-Law.

if satisfied of the existence of a nuisance, serve a notice on the person by whose act, default, or sufferance the nuisance arises or continues . . . requiring him to abate the same within the time specified in the notice, and to execute such works and do such things as may be necessary for that purpose, and if the sanitary authority think it desirable (but not otherwise) specifying any work to be executed. (2.) The sanitary authority may also by the same or another notice served on such . . . person require him to do what is necessary for preventing the recurrence of the nuisance.

Sect. 5.—(1.) If either (a) the person on whom a notice to abate a nuisance has been served as aforesaid makes default in complying with any of the requisitions thereof within the time specified; or (b) the nuisance although abated since the service of the notice is, in the opinion of the sanitary authority, likely to recur on the same premises, the sanitary authority shall make a complaint, and the petty sessional court hearing the complaint may make on such person a summary order (in this Act referred to as a nuisance order). (4.) A prohibition order may prohibit the recurrence of a nuisance. (5.) An abatement order or prohibition order shall, if the person on whom the order is made so requires, or the court considers it desirable, specify the works to be executed by such person for the purpose of abating or preventing the recurrence of the nuisance.

The facts of the case were, that the applicant Robinson was the chief officer in charge of the Salvation Army Shelter situate at No. 115A., Blackfriars-road, in the parish of St. George's, Southwark. As such he was in July, 1895, served with a notice under sect. 4 of the Public Health (London) Act, 1891. This notice was to the effect that the Vestry of St. George's parish, Southwark, being the sanitary authority of the said parish,

Being satisfied of the existence of a nuisance at the premises situated at No. 115A., Blackfriars-road aforesaid, the said nuisance being that the said premises or certain parts thereof are so overcrowded as to be injurious or dangerous to the health of the inmates, do hereby require that you within three days from the service of this notice abate the same.

This notice not having been complied with a summons was served on Robinson. This summons was issued on the complaint of Dr. Waldo, medical officer of health for the parish of St. George, on the 5th day of August, and described the nuisance complained of as follows :

The said premises or certain parts thereof are so overcrowded as to be injurious or dangerous to the health of the inmates.

The summons was heard on the 15th day of August and subsequent days, and on the 21st day of November the magistrate made an order in these terms :

Southwark Police-court.—To James Thomas Robinson, chief officer in charge of certain premises known as the Salvation Army Shelter, situate at 115A, Blackfriars-road, in the parish of St. George the Martyr, Southwark, in the county of London.—Whereas the said James Thomas Robinson, occupier of the said premises, within the meaning of the Public Health (London) Act, 1891, has this day appeared before me Wyndham Slade, Esq., sitting at the Southwark Police-court, to answer the matter of a complaint made by Frederick Joseph Waldo, medical officer of health, that the said premises are so overcrowded as to be injurious or dangerous to the health of the inmates. Now on proof here had before me, Wyndham Slade, Esq., that the nuisance so complained of does exist at the said premises and the same is caused by the act, default, or sufferance of the said James Thomas Robinson, the chief officer in charge of the said premises, I, in pursuance of the Public Health (London) Act, 1891, hereby prohibit the recurrence of the said nuisance.—Given under my hand and seal this 21st day of November, 1895.—WYNDHAM SLADE, one of the magistrates of the police-courts of the metropolis.

Robinson, upon this order being made, applied for and obtained

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a rule *nisi* for a *certiorari* calling on the magistrate and the vestry to show cause why the order should not be removed, and why the order, when returned, should not be quashed on the grounds—(1) That "house" is not mentioned in the notice, summons, or order, and premises are not a "house;" and (2) that the persons proved to have been at the premises in question were not "inmates" thereof within the meaning of sect. 2 of the Public Health (London) Act, 1891.

On this rule coming on for argument,  
*Macmorran*, Q.C. (*F. Low* with him) showed cause.—The first of the grounds on which the rule was granted applies equally to notice, summons, and order; and as to the proceedings prior to the order no formal objection could be taken. As to the summons he relied upon sect. 1 of the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43). [WRIGHT, J.—But if both the summons and the order are defective on the same point, what have we to amend the order by?] The Court could amend in accordance with the obvious intention of the magistrate. At any rate, it was clear that, however defective the summons might be, and no matter how the defendant was brought before the justices, they had jurisdiction to deal with the offence disclosed in the evidence: (*Reg. v. Hughes*, 14 Cox C. C. 284; 40 L. T. Rep. 685; 4 Q. B. Div. 614.) [WRIGHT, J.—I do not think your argument is good as to the notice. The serving of a proper notice is by the Act here made a condition precedent to the issue of the summons, and the making of the order.] As to that it had never been contended that a notice intelligible in itself was bad because it did not follow the exact words of the Act. [Lord RUSSELL, C.J.—The object of the notice is to convey intelligibly to the mind of the person concerned what is complained of, and what he is required to do.] That was not disputed, but here all that was alleged against the notice was that a building otherwise sufficiently indicated in the notice was described as premises and not as a house. No complaint was made before the magistrate as to the description of the premises, and it was too late to raise it. As to the order itself, it was on the face of it good, and if it was not good the defect was one which the magistrate could amend, and which therefore this Court could amend under sect. 7 of Baines's Act (12 & 13 Vict. c. 45). [*Willis*, Q.C.—The Court could amend under Baines's Act only on the return of the writ.] That might be so, but it was customary for the Court to refuse a *certiorari* where the defect could be amended by the magistrate. Further, the order is on the face of it good. "Premises" was the generic term used in sects. 4 and 5 of the Act as to all the buildings referred to in connection with nuisances under sect. 2. It was also used in the same way in the schedule to the Act. The point whether the premises were a house within the Act, and as to whether the persons lodging there were inmates of it within the Act, was settled by *Reg. v. Mead* (59 J. P. 150). [He was stopped by the Court.]



*Willis*, Q.C. (with him *Courthope Munroe*) for the rule.—The contention was that the conviction did not show any offence within the statute. The conviction should set out the offence in the words of the statute. Here the conviction merely set out that the said premises were overcrowded. The statute said overcrowding was an offence against it only in case it took place in a house or part of a house, and was such as to be dangerous to the inmates of the house. [WRIGHT, J.—I think the order is formally defective, but the magistrate is willing to amend. What can you gain by the writ? The Court here will amend just as the magistrate would.] On the return there were several questions which could be re-opened; and the Court might be asked to hold that there was no evidence on which the order could be made. The objection could also be raised that the notice contained no requisitions as to the work required to be done. [Lord RUSSELL, C.J.—That is not open to you.] It is submitted that this was not a house within the meaning of the Act. The evidence showed that it was not used for dwelling purposes. The people who slept there came after a certain hour of the evening, and were turned out at seven in the morning. Some of them slept in hammocks; others sat by the fire through the night. Neither were the persons using the shelter “inmates” of it. [Lord RUSSELL, C.J.—All this is covered by *Reg. v. Mead*.] But it was contended that the evidence given before the magistrate for holding the overcrowding a nuisance did not sustain the charge. It went to show that the shelter was likely to lead to the spread of disease in the neighbourhood. The Act specially points out that overcrowding to be a nuisance must be injurious to the health not of the neighbourhood, but of the inmates themselves. This question could be raised on the return to the writ.

*H. Sutton*, for the magistrate, said that the magistrate was willing to amend.

Lord RUSSELL, C.J.—I am of opinion that the rule should be discharged. The facts of the case are these: The applicant, the keeper of a Salvation Army Shelter, was in July last served with a notice under the Public Health (London) Act, 1891, requiring him to abate a nuisance on the premises due to overcrowding. He failed to obey this notice, a summons was issued, and the magistrate made an order. A rule *nisi* for a *certiorari* to quash this order was then sought, and obtained on two grounds. The first is, that “house” is not mentioned in the notice, summons, or order, and that the premises are not “a house” within the meaning of the Act; the second, that the persons proved to have been at the premises in question were not “inmates” thereof within the meaning of the Act. The rule was asked for on a third ground, namely, that there were no proper requisitions in the notice, but the Court having looked at the Act came to the conclusion that no such requisitions were required by it, and the rule was refused on that ground. We

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SLADE AND  
ANOTHER;  
*Ex parte*  
ROBINSON.

1896.

Nuisance—  
Overcrowding  
in house—  
Salvation  
Army  
Shelter—  
“Premises”—  
“Inmates”—  
Public Health  
(London) Act,  
1891—  
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c. 76, s. 2.



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ROBINSON.  
—  
1896.  
—  
Nuisance—  
Overcrowding  
in house—  
Salvation  
Army  
Shelter—  
'Premises'—  
'Inmates'—  
Public Health  
(London) Act,  
1891—  
54 & 55 Vict.  
c. 76, s. 2.

have, therefore, to deal with this case only on the two grounds first stated. Now the section of the Public Health (London) Act, 1891, on which the case turns is sect. 2, which deals with nuisances which may be abated by summary proceedings [reads sect. 2]. The test to be applied in the case of a house to ascertain whether a nuisance within the Act is caused by overcrowding is whether the overcrowding is such as to be injurious to the health of the inmates. In the case of a dwelling-house used jointly as a factory or workshop a different test is given—whether the overcrowding is such as to be injurious or dangerous to the health of those employed therein. Now take the notice on which these proceedings are based. That notice speaks not of house or dwelling-house, but merely of premises. It is not disputed that, if in the body of the notice after the word premises there had been inserted "being a dwelling-house," the notice would be good. Is it bad for want of these words? I do not think it is. It is not unimportant to observe that the premises in question are described in this notice as a shelter, and the notice is addressed to the applicant as the person in charge of a shelter. Shelter has received a judicial interpretation in *Reg. v. Mead*, where it was held to be a house within the meaning of this Act. It is also not unimportant to notice that the language used in describing the persons using the shelter as inmates is the language used by the Act as applying to nuisances caused by overcrowding in dwelling-houses. Therefore, substantially, this notice is in accordance with the words of the Act, and clearly conveys what is the offence complained of. The summons follows the words of the notice, and the order the words of the summons. I need not repeat as to them the remarks I have made on the notice. I think, therefore, the objection taken to all these documents is bad. I will only add that it would be exceedingly unsatisfactory if the proceedings in a case like this could be vitiated by a puerile technicality like this—by pointing out a formal defect which misleads nobody. I may add further that, though the magistrate has in this case thought it better not to amend, he can at any moment do so. As I have said, I consider the documents good as they stand, but in a similar case it might be as well if the magistrate did amend, in order to prevent subsequent difficulties. Looking at the circumstances that something could be said in support of the objection, and that the place was overcrowded from charitable and not from mercenary motives, I think we should discharge the rule without costs.

WRIGHT, J.—I concur.

Solicitors for the applicant, *Ranger, Burton, and Frost*.

Solicitors for the Vestry, *Birt and Follett*.

Solicitor for the magistrate, *Solicitor for the Treasury*.

## QUEEN'S BENCH DIVISION.

*April 24 and 27, 1896.*

(Before Lord RUSSELL, C.J. and WRIGHT, J.)

ALTY (app.) v. FARRELL (resp.). (a)

*Bye-law—Reasonableness—“ Person appointed for the purpose ”  
—“ Any constable ”—Weights and Measures Act, 1889 (52 & 53  
Vict. c. 21), ss. 27, 28, and 29.*

*Under sect. 28 of the Weights and Measures Act, 1889 (52 & 53  
Vict. c. 21), powers are given to local authorities to make bye-  
laws regulating for the purposes of the Act the sale of coal in  
quantities not exceeding two hundredweight. By sect. 27 any  
seller or purchaser of coal, person in charge of a vehicle carrying  
coal, inspector of weights and measures, or other person appointed  
for the purpose, and by sect. 29 any inspector of weights and  
measures, or officer appointed for the purpose by the local  
authority, may under certain circumstances require coal exposed  
or intended for sale, to be weighed or re-weighed.*

*By a bye-law purporting to be made under sect. 28 any purchaser  
or anyone on his behalf, or any inspector of weights and  
measures, or any constable, was empowered to require the  
re-weighing of coal when offered for sale in quantities not exceed-  
ing two hundredweight :*

*Held, that this bye-law was unreasonable and bad.*

*Per Wright, J. : It is doubtful whether local authorities have any  
power to make bye-laws as to the weighing of coal under sect. 28,  
since provision for this is made in the Act itself (sects. 27  
and 29.)*

**A**PPEAL by special case from a conviction of the appellant by  
the justices of Blackburn in petty sessions.

The appellant was a hawker of coal. On the 16th day of  
August, 1895 he was in charge of a lorry containing coal which  
he was offering for sale within the borough of Blackburn. The  
coal was contained in sacks, each of which held a quantity not  
exceeding 2cwt. An inspector of weights and measures requested  
him to weigh certain of these sacks, and he refused. The  
inspector thereupon filed an information against him charging  
him with a breach of a bye-law made by the corporation in pur-  
suance of powers conferred upon the corporation by sect. 28 of  
the Weights and Measures Act, 1889 (52 & 53 Vict. c. 21). At

(a) Reported by J. A. STRAHAN, Esq., Barrister-at-Law.

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v.  
FARRELL.

1896.

*Weights and  
Measures Act,  
1889—Bye-  
law—Reason-  
ableness—  
Prosecutor—  
“Any con-  
stable”—  
52 & 53 Vict-  
c. 21, ss. 27,  
28, 29.*

the hearing of the information the appellant contended that the bye-law in question was invalid as being unreasonable and not within the scope of the powers given by the Act. The magistrates held that the bye-law was good, and convicted the appellant.

The terms of the bye-law were as follows :

Every person in charge of any vehicle carrying coal for sale within the borough, in quantities not exceeding 2cwt., shall carry with such vehicle a perfect weighing instrument of a form approved of by the corporation, together with correct weights, and such person shall re-weigh the coal upon being requested to do so by any purchaser, or by anyone on behalf of the purchaser, or by any inspector of weights and measures, or by any constable.

The provisions of the Weights and Measures Act, 1889, on which the validity of this bye-law depended, are as follows:

Sect. 27.—(1.) Any seller or purchaser of coal, person in charge of a vehicle in which coal is carried, inspector of weights and measures, or other officer appointed for the purpose by the local authority, may require that any coal or any vehicle used for the carriage of coal in bulk, be weighed or re-weighed by any weighing instrument stamped by an inspector of weights and measures. Provided as follows: (b) Where any such coal or vehicle has at the instance of the purchaser been weighed or re-weighed in pursuance of this section, and found to be of the weight stated in that behalf by the seller of the coal, or the person in charge of the vehicle, the purchaser shall be liable to the payment of all reasonable costs actually incurred of and incidental to the weighing and re-weighing.

Sect. 28.—(1.) Any local authority may from time to time make, revoke, and alter bye-laws (a) regulating for the purposes of this Act the sale of coals in quantities not exceeding two hundredweight; and (b) requiring, either generally or in specified classes of cases, a weighing instrument, of a form approved by the local authority to be carried with any vehicle in which coal is carried for sale or delivery to a purchaser; . . . and may by such bye-laws impose fines recoverable summarily, and not exceeding in each case five pounds, for the breach of any such bye-laws.

Sect. 29.—(1.) Any inspector of weights and measures or officer appointed for the purpose by the local authority may, at all reasonable times, enter any building or part of a building or other place in which coal is sold or kept or exposed for sale, and may stop any vehicle carrying coal for sale or for delivery to a purchaser, and . . . may weigh any load, sack, or other less quantity of coal, found in any such place or vehicle or which is in course of delivery to any purchaser.

*T. W. Ohitty* for the appellant.—We admit the first part of the bye-law—that referring to the weighing instrument—is good but we contend that the second part—that dealing with re-weighing—is bad as being unreasonable, and also as being beyond the authority to make bye-laws given by sect. 28 of the Act. [*WRIGHT, J.*—Why should there be any need of a bye-law at all as to weighing coal? Sect. 27 of the Act itself provides for that.] It is contended by the other side that that section applies only to weighing of coal in bulk. I contend, however, that sect. 29 covers the matter dealt with in the bye-law, and that therefore there is no need for it. I contend, too, that it is unreasonable since no limit is placed on the number of times a hawker may be compelled to weigh his sacks of coal. Any purchaser, or anyone on behalf of the purchaser, or any inspector, or any policeman can order him to weigh and re-weigh all the coal in his lorry. [*Mattinson, Q.C.*—No; the purchaser or anyone on his behalf can demand weighing only in so far as he or his

principal is a purchaser of the coal.] Granting that, there is no limitation as to an inspector or any policeman in the borough. The Act only gives the power to order weighing to "persons appointed for the purpose"; (see sects. 27 and 29.) The bye-law goes beyond that, and gives every policeman the right to demand it. It is plain this is a power which may wilfully or by accident lead to great hardship towards the coal hawker: (*Kent County Council v. Humphrey*, 72 L. T. Rep. 563; (1895) 1 Q. B. 903.)

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*Weights and Measures Act, 1889—Bye-law—Reasonableness—Prosecutor—*  
"Any constable"—  
52 & 53 Vict. c. 21, ss. 27, 28, 29.

*Mattinson*, Q.C. (with him *A. T. Lawrence*) for the respondent. —This bye-law is good if it is not unreasonable. [Lord RUSSELL, C.J.—No; you must first show it is within the powers given by the Act, and then you must show that it is reasonable.] My contention is, that the bye-law in substance goes no further than the statute. [WRIGHT, J.—The statute says a re-weighing may be ordered by a person appointed for the purpose. Your bye-law says it may be ordered by any policeman.] Surely a policeman may be considered a person appointed for the purpose, and this bye-law may be considered a sufficient appointment of him. [Lord RUSSELL, C.J.—I doubt it. The Act seems to me to contemplate a person specially appointed for the purpose.] The policemen are a disciplined body of men under the control of and appointed by the corporation. There is little likelihood they would abuse the power, and giving it to them will lead to the more efficient enforcement of the Act. A bye-law giving power to every conductor and every authorised servant of a tramway company to demand a passenger's ticket for the purpose of preventing frauds on the company by its own servants has been held reasonable: (*Lowe v. Volp*, 74 L. T. Rep. 143; (1896) 1 Q. B. 257.) Sect. 26 (2) of the Act gives greater powers than are conferred by this bye-law.

Lord RUSSELL, C.J.—I am most unwilling to do or say anything which would seem to interfere with local authorities in their efforts to give effect to an Act of this kind. This Act was passed with the object of protecting buyers of coal of the humbler kind, and of ensuring that such persons got the quantity of coal for which they paid. But, in considering whether or not we can sustain a bye-law made to assist the enforcement of this object, we must look to two things. In the first place, we must see whether the Legislature have given authority to make bye-laws on the particular subject; and in the second place, if they have given authority, then we must consider whether that authority has been reasonably exercised in the case of the particular bye-law in question. Here the bye-law in question purports to be made under sect. 28 of the *Weights and Measures Act, 1889*. As to the first point, then, I think that on the whole there was authority to make bye-laws on this matter. The sole question then is, has that authority been reasonably exercised? It is not without doubt that I have come to the conclusion that the exercise of the authority as shown in this bye-law is not reasonable. I

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*Weights and  
Measures Act,  
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ableness—  
Prosecutor—  
“Any con-  
stable”—  
52 & 53 Vict.  
c. 21, ss. 27,  
28, 29.*

regret this ; but I have this consolation that, independently of this bye-law, the statute itself gives sufficient powers to effect its object. The regulation of the sale of coal depends on sects. 25 to 29 inclusive. [Reads these sections.] Now the bye-law here in question may, I think, be properly said to come within the scope of this statute as shown in these provisions. Let us now consider it more in detail. It consists of two parts. [Reads bye-law.] The first part is admittedly within the Act. It is different with the second part. On a literal and accurate construction of it, it would be possible that the same sack of coals might be required to be weighed and re-weighed—by the purchaser, by some one on behalf of the purchaser, by any inspector and by every policeman in the borough. There is no limit to the number of times the hawker may have to re-weigh them, and without any improper intent on the part of the constables, where every constable may at his own discretion order a re-weighing, much hardship may result to the hawker. I have grave doubts whether, when the Legislature said that persons appointed for the purpose might require the coals to be weighed, they contemplated that that power should be put into the hands of every policeman in a large borough like Blackburn. For this reason but not without hesitation, I think that the bye-law is invalid, and that the conviction must be quashed.

WRIGHT, J.—I agree. I merely wish to add to what my Lord has said, that I doubt whether the local authorities have power to make bye-laws on this particular matter of re-weighing coals, since there are special provisions in the statute itself applying to the point.

*Conviction quashed.*

Solicitors for the appellant, *F. J. Thirlwall*, for *A. Read*, Blackburn.

Solicitors for the respondent, *Robbins, Billing, and Co.*, for *Fox*, Blackburn.

## QUEEN'S BENCH DIVISION.

*Tuesday, April 28, 1896.*

(Before Lord RUSSELL, C.J. and WRIGHT, J.)

BURNETT (app.) v. BERRY (resp.). (a)

*Bye-laws*—"Using and frequenting the street for the purpose of betting"—*New criminal offence—Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 23.*

*A bye-law made by a municipal corporation inflicting a penalty of not more than 5l. upon any person using and frequenting the streets of the borough for the purpose of book-making or betting either on behalf of himself or of any other person, is for the good rule and government of the borough, and therefore a valid bye-law within sect. 23 of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50). The fact that it creates a new criminal offence is not sufficient in itself to make it unreasonable or ultra vires.*

*Strickland v. Hayes (74 L. T. Rep. 137; (1896) 1 Q. B. 290) commented upon.*

**A**PPEAL by special case from the decision of the stipendiary magistrate of Wolverhampton, dismissing a summons against the respondent.

The respondent was on the 20th day of November, 1895, summoned before the stipendiary magistrate on two informations. The first of these was that he on the 30th day of October, 1895, and on divers other days, did unlawfully frequent and use a certain street within the borough for the purpose of book-making and betting, contrary to a bye-law of the said borough, which at the time of the offence and still was in force in the borough. The second information was for an offence of a similar character.

The two informations were heard together, and it was proved or admitted that the respondent did on the days mentioned in the informations frequent and use the places mentioned therein for the purpose of book-making and betting, but he did not cause any obstruction or nuisance by so doing. It was held, however, by the magistrate, that the bye-law in question imposed a restriction which was not consistent with the statute or common law of the realm upon a legal calling, and that the

(a) Reported by J. A. STRAHAN, Esq., Barrister-at-Law.



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*Municipal  
corporations  
—Bye-laws—  
Using streets  
for betting—  
New criminal  
offence—  
45 & 46 Vict.  
c. 50, s. 23.*

corporation of Wolverhampton had no power to impose such a restriction ; and he dismissed the summonses.

The prosecutor then appealed.

The bye-law in question was as follows :

Any person who shall frequent and use any street or other public place within the borough of Wolverhampton, either on behalf of himself or of any other person for the purpose of book-making or betting, or wagering or agreeing to bet or wager with any person, shall be liable to a penalty not exceeding 5*l*.

*Bosanquet*, Q.C. and *C. W. Mathews*, for the appellant, after the special case had been read, were not called on by the Court to argue in support of the bye-law.

*H. E. Richards* (with him *Jelf*, Q.C.) stated that he was not aware the Court had already decided that such a bye-law as this is valid under sect. 23 of the Municipal Corporations Act, 1882. He contended, however, that every bye-law must be tested as regards its validity by its wording, and that whatever might have been the terms of the previous bye-law, this one was too general. Its object was to prevent the trade of book-making being carried on in the street. Book-making was not in itself an illegal trade, and might be carried on in a lawful way : (*Thwaites v. Coulthwaite*, 74 L. T. Rep. 164 ; (1896) 1 Ch. 496). Income made from carrying it on was liable to income tax : (*Partridge v. Mallandine*, 56 L. T. Rep. 203 ; 18 Q. B. Div. 276). The bye-law then prohibited what the Legislature had not prohibited. In other words, it created a new offence. But it had recently been held that under sect. 23 of the Municipal Corporations Act municipal authorities have no power to make a bye-law which creates a new offence : (*Strickland v. Hayes*, 74 L. T. Rep. 137 ; (1896) 1 Q. B. 290). As it stood, the bye-law would make it an offence for two workmen on their way home from work to make a bet. He also referred to *MacDonald v. Lochrane* (51 J. P. 629).

Lord RUSSELL, C.J.—In my opinion the magistrates were wrong in this case. I have already had occasion to make this observation which I now repeat, that authorities, that is to say, decisions of judges upon other bye-laws have very little weight, or are of very little use, in assisting the Court to determine whether a particular bye-law is or is not good. Each bye-law must be judged by its own language, and by the circumstances to which it is addressed ; but I would make this observation in reference to the case which has been cited of *Strickland v. Hayes*, that when Lindley, L.J. is reported as having said that he cannot find it was intended to give power to make bye-laws creating any new criminal offence, he cannot have meant to convey that a bye-law under the Municipal Corporations Act can only prohibit matters or practices so far as they are already criminal by the existing law, because so to hold would be simply to reduce the functions of the bye-laws which are to be made under the Act of 1882, to some kind of machinery dealing with already existing criminal practices or criminal acts. I cannot think, if the learned

Lord Justice said and meant so, that it is right, and I gravely doubt whether he said so. Now to address myself to the particular bye-law. It purports to be made under the authority of the Municipal Corporations Act, 1882, which provides, by sect. 23, "That the council may from time to time make such bye-laws as to them seem meet for the good rule and government of the borough, and for the prevention and suppression of nuisances not already punishable in a summary manner by virtue of any Act in force throughout the borough." That is their authority. They make the bye-law in question, and, as the learned counsel who has put his contention very clearly before us says, there must be some limitation on the power given by this section. They cannot invent a new code of crime. They cannot turn that which is entirely innocent, and is not likely to interfere with good order and government, into a penal matter. There must be some limitation I quite agree. Therefore, one must ask oneself the question what was the object with which this particular bye-law was made, and is that bye-law justified with a view to the particular matter to which it is addressed as one necessary or useful for the purpose of good rule and government? Now, one cannot for a moment doubt to what it was meant to apply. It was not meant to apply to men accidentally meeting in the streets and making bets; but it was meant to apply to any men whose business was the business of betting, using the streets for the purpose of betting, lying in wait in the neighbourhood, it may be, of places of employment where a number of working men are engaged, or in the neighbourhood of public-houses, or in some other particular places where temptation may best be put in the way of passers by, and under circumstances in which it may be exceedingly likely that the congregation of these parties would be a source of annoyance to the passer-by, and would probably produce a state of things inconsistent with good rule and government. Accordingly the bye-law runs in these terms: "Any person who shall frequent and use any street or other public place within the borough of Wolverhampton, either on behalf of himself or of any other person, for the purpose of book-making, or betting, or wagering, or agreeing to bet or wager with any person, shall be liable to a penalty not exceeding 5*l*." I think it would be impossible for the magistrates to convict under that bye-law, in such cases as have been put by the learned counsel of persons not resorting to the streets for the purpose of betting, but casually making a bet. That would not be against the bye-law at all. What is aimed at is: the use of a house or place for the purpose of betting with persons resorting thereto being forbidden by the law, these persons shall not be allowed to use public thoroughfares, public streets, and public places for the purpose of carrying on their business. I think one cannot doubt that, if so permitted to one, it must be permitted to a hundred, and is likely to lead to great inconvenience and great public annoyance. I think the bye-law is perfectly good, and I think

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*Municipal corporations*  
*— Bye-laws—*  
*Using streets*  
*for betting—*  
*New criminal*  
*offence—*  
 45 & 46 Vict.  
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BURNETT the magistrates in this case ought properly to have convicted.  
 v. The case, therefore, must be remitted to them.  
 BERRY. WRIGHT, J.—I am of the same opinion, and I only wish to  
 1896. add, with respect to such observations as are reported to have  
 — Municipal been made in *Strickland v. Hayes*, tending in the direction that  
 corporations bye-laws can only deal with what is either prohibited by law or is  
 — Bye-laws— a nuisance, that I think it would be desirable to consider that  
 Using streets question upon some other occasion.  
 for betting— *Bosanquet*.—The appeal will be allowed with costs, and the  
 New criminal case remitted to the justices.  
 offence— Lord RUSSELL, C.J.—Yes.  
 45 & 46 Vict.  
 c. 50, s. 23.

*Appeal allowed and case remitted*

Solicitors for the appellant, *Parker, Sharpe, and Co.*, for  
*H. Brevett*, Town Clerk, Wolverhampton.

Solicitors for the respondent, *R. D. Wilcock and Taylor*,  
 Wolverhampton.

## QUEEN'S BENCH DIVISION.

*Fri day, May 1, 1896.*

(Before Lord RUSSELL, C.J. and WRIGHT, J.)

REG. v. LEWIS (Stipendiary Magistrate) AND MOSS. (a)

*Volunteer Corps—Power to make rules—Loss of capitation grant through inefficiency of member of corps—Rule making member liable for loss—Ultra vires—Volunteer Act, 1883 (26 & 27 Vict. c. 65), s. 24.*

*The power given by sect. 24 of the Volunteer Act, 1863 (26 & 27 Vict. c. 65) to officers and members of a volunteer corps to make rules for the management of the property, finances, and civil affairs of the corps, does not authorise them to make a rule rendering any member of the corps who shall fail to make himself efficient, and to earn the Government capitation grant, liable to pay to the funds of the corps a sum equal to the amount of Government capitation grant which he has in consequence failed to earn.*

(a) Reported by J. A. STRAHAN, Esq., Barrister-at-Law.

*Per Wright, J. : The term penalty is ambiguous, and the fact that a sum is declared to be recoverable as a penalty is not in itself enough to show that the failure to pay it is an offence on which an information lies, and a conviction can be obtained.*

REG.  
v.  
LEWIS  
(STIPENDIARY  
MAGISTRATE)  
AND MOSS.

1896.

**R**ULE nisi for a *mandamus* directing the stipendiary magistrate of Cardiff to hear and determine an application for a summons against Moss made by one Alfred Thornley.

Alfred Thornley was the commanding officer of the Severn Volunteer Division Royal Engineers, and Moss had been a member of the corps. The latter had failed to make himself efficient, and the corps had owing to this lost the Government capitation grant, which would have amounted to 5*l.*

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By rule 2, part 1, of the rules of the corps, which purported to be made under the authority given by sect. 24 of the Volunteer Act, 1863 (26 & 27 Vict. c. 65), and which had been approved by the War Office, it was provided that,

Any officer or other member of the corps who shall fail to make himself efficient and to earn the Government capitation grant, either by reason of his resigning or having been dismissed for misconduct, neglect of duty, or other sufficient cause, or by failing to fulfil the requirements laid down by the regulations in force at the time, shall pay to the funds of the corps a sum equal to the amount of Government capitation grant which he has in consequence failed to earn.

Moss not having complied with this rule, the commanding officer laid an information against him, for that he, being a person belonging to a volunteer corps, did unlawfully neglect to pay the sum of 5*l.* undertaken to be paid by him to the funds of the corps, and due under the rules of the corps and actually payable by him, and applied for a summons on this information. The stipendiary magistrate refused to issue a summons on the ground that the summons could only be issued on complaint, and not on information. The commanding officer then obtained the rule nisi for a *mandamus*.

On the rule nisi coming on for argument no counsel appeared to show cause. The stipendiary magistrate, however, filed an affidavit to the effect that the ground upon which he had refused the summons was that the sum alleged to be owing from Moss was a civil debt, and as such recoverable on complaint, and not a penalty recoverable on information.

*Bailhache* in support of the rule.—The question was whether Moss's liability was civil or criminal. That depended on the provisions of the Volunteer Act, 1863. Sect. 11 of that Act related to efficiency, the requisites for which are to be from time to time declared by an Order in Council. Sect. 21 dealt with the discipline of the officers and volunteers, and enacted that a volunteer discharged for misconduct shall remain liable nevertheless "to pay all money due or becoming due by him, under the rules of his corps, either before or at the time, or by reason of his discharge." Sect. 24 gives to the officers and volunteers belonging to a volunteer corps power to make rules "for the management of the property, finances, and civil affairs of the corps," subject

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to such rules receiving Her Majesty's approval. Sect. 27 makes any money due under the rules of the corps by any person belonging or having belonged to the corps, recoverable as a penalty." Sect. 48 enacts that "Any . . . money or fine by this Act made recoverable as a penalty under this Act is recoverable—may be recovered as follows: In England, in a summary way before two or more justices of the peace having jurisdiction where the offence is committed or where the offender happens to be, in manner directed by the Act of the session of the eleventh and twelfth years of Her Majesty, c. 43." Sect. 1 of 11 & 12 Vict. c. 43 (Jervis's Act) lays down two modes for the summary recovery of money: one (for a penalty) by summons on information; the other (for a civil debt) by summons on complaint. Up till 1879 it was a matter of little importance under which of these classes the recovery of money due under the rules of a volunteer corps came, since under either the failure to pay might be punished by imprisonment, but the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49) abolished imprisonment in the case of money recoverable by summons on complaint—i.e., for failure to pay civil debts. It was now contended that debts due under such rules are recoverable by information, since the Volunteer Act, 1863, declares that such debts are to be recovered "as penalties," and the failure to pay is described as "an offence." [Lord RUSSELL, C.J.—Is not a penalty always alterable as to amount at the discretion of the magistrate?] It was not said that this was a penalty, but that it was recoverable "as a penalty." Putting the case in another way, by joining a volunteer corps a man rendered himself liable to the Volunteer Act. One of his statutory duties was to make himself efficient, and in failing to do that he committed an offence, and rendered himself liable to a penalty: (*Reg. v. Paget*, 45 L. T. Rep. 794; 8 Q. B. Div. 151.) [WRIGHT, J.—In that case no definite sum was owing. The amount the defendant was to pay was within the discretion of the magistrate, and on that ground the Court held it to be not a civil debt, but a penalty for which there might be a conviction.] It was contended that here the rules did not establish a relation of contract, but a statutory status. This distinguished the case from *Reg. v. Kerswell and others* (71 L. T. Rep. 574; (1895) 1 Q. B. 1). [Lord RUSSELL, C.J. — That case shows that the fact that the sum recoverable is called a penalty does not make it a criminal liability. Assuming, however, that the rules would create a criminal liability, are they within the authority given by the Act? The Act refers merely to the management of the finances of the corps.] The rule here in question came within the words "management of the finances," or if not, then "of the civil affairs of the corps." He also referred to *Mellor v. Denham* (42 L. T. Rep. 493; 5 Q. B. Div. 467).

Lord RUSSELL, C.J.—This case seems to me one of some importance, and I could have wished that we had had the advan-

tage of hearing counsel against the rule. As it is, I am not at all confident as to the judgment I am about to pronounce—I am not sure I have quite grasped the point of the case—but the view I take is this: To give effect to these rules it is necessary to show that they are conformable to and within the scope of the statutory authority to make rules. Now rule 2 says: “Any . . . member of the corps who shall fail to make himself efficient and to earn the Government capitation grant . . . shall pay to the funds of the corps a sum equal to the amount of the Government capitation grant which he has in consequence failed to earn.” Then it is said that, this rule being read into the statute, under sects. 27 and 48, the sums due under it, though not penalties, may be recovered as penalties, and that under sect. 1 of Jervis’s Act their non-payment is an offence for which an information will lie, and for which the volunteer can be convicted and imprisoned. But, in my opinion, sect. 24 of the Act under which this rule purports to be made gives no authority to make such a rule. That section enacts that the officers and volunteers belonging to a volunteer corps may from time to time make rules for the management of the property, finances, and civil affairs of the corps. The rule here in question does not, in my opinion, refer to any of these things. More properly it creates an offence, and provides for the payment of a sum which will go to swell the finances of the corps. But I cannot see how it can be considered to be a rule relating to the management of the finances or civil affairs of the corps. Although, however, the rules may not have statutory authority, they may perhaps be regarded as rules under which he agrees to come when he joins the corps. In that case it is clear the matter would not be within the first part of sect. 1 of Jervis’s Act, but would be a mere money obligation within the second part. As I said, however, I feel considerable hesitation as to the point raised in this case.

WRIGHT, J.—I am of the same opinion. For myself I will merely say that I do not agree that because a sum is declared to be recoverable as a penalty it is therefore recoverable by information. Penalty is an ambiguous term, and it is plain that penalties may be recovered not only on information but also on complaint.

*Rule discharged.*

Solicitors: *Ince, Colt, and Ince*, for *Arthur Rees*, Cardiff.

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## QUEEN'S BENCH DIVISION.

*Tuesday, May 5, 1896.*

(Before Lord RUSSELL, C.J. and WILLS, J.)

SPIERS AND POND v. BENNETT. (a)

*Adulteration of food—Milk—Abstraction of cream—Alteration—Altered article sold without disclosure—"Disclosure" how made—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63) s. 9.*

*The appellants, proprietors of a refreshment room, served a customer with a glass of milk. On the glass was engraved "Not guaranteed new or pure milk, or with all its cream. See notices." The last words referred to a printed notice framed and placed on the counter, as follows:—"Milk Notice. Spiers and Pond Limited purchase all milk sold by them under a warranty of its purity and genuine quality, and take all possible precautions to ensure its supply to their customers in proper condition, but they are unable to guarantee it as either new, pure, or with all its cream, and (to meet the requirements of the Food and Drugs Act) do not therefore sell it as such." The glass of milk so sold was found to be deficient in the proper proportion of cream.*

*In a prosecution under sect. 9 of the Sale of Food and Drugs Act, 1875, for selling an article altered by abstraction of part of it, so as to injuriously affect its quality, without making disclosure of the alteration:*

*Held, that the above notice amounted to a disclosure of the alteration, and the seller therefore was not liable.*

**C**ASE stated by a metropolitan police magistrate.

The appellants, Messrs. Spiers and Pond, appeared on a complaint preferred by Albert Bennett, a sanitary inspector, charged with the execution of the Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), charging the appellants that they, on the 25th day of September, 1895, did unlawfully sell a certain article—to wit, milk—from which the fat had been abstracted by skimming or otherwise to the extent of at least 17 per cent., without disclosing to the purchaser such abstraction or alteration,

(a) Reported by G. H. GRANT, Esq., Barrister-at-Law.

contrary to the provisions of sect. 9 of the said Act, which provides as follows :

No person shall, with the intent that the same may be sold in its altered state without notice, abstract from an article of food any part of it so as to affect injuriously its quality, substance, or nature, and no person shall sell any article so altered without making disclosure of the alteration under a penalty in each case not exceeding 20l.

The case disclosed that the appellants were refreshment contractors carrying on business at (amongst other places) Farringdon-street station. That on the 25th day of September, at about 2.30 p.m., the respondent entered the premises and requested to be supplied with a glass of milk, and that an assistant of the appellants thereupon poured out a glass of milk from a churn on the counter and handed it to the respondent. That the milk was obtained from the churn by means of a tap, but the churn was so constructed that no milk would flow from the tap unless and until, by pressing a knob or button at the top of the vessel a piston rod or "dasher" descended to and reached the bottom. The object of this arrangement was that the milk and cream should be kept properly mixed together. That the milk was supplied to the respondent in a glass, whereon were distinctly written in a blue colour the words, "Not guaranteed as new or pure milk, or with all its cream; see notices." That on the counter was placed a printed and framed notice in the following words :

Milk notice.—Spiers and Pond Limited purchase all milk sold by them under a warranty of its purity and genuine quality, and take all possible precautions to ensure its supply to their customers in proper condition; but they are unable to guarantee it as either new, pure, or with all its cream, and (to meet the requirements of the Sale of Food and Drugs Act) do not therefore sell it as such.

The milk on being analysed proved to be deficient in cream to the amount of 17 per cent. It was proved on behalf of the appellants that the only milk sold by them was supplied to them by the London and Provincial Dairy Company under a written warranty that it was new milk in good condition, pure and unadulterated, in the same condition as when taken from the cow without addition or abstraction. It was further proved that at 7 a.m. on the day in question a servant of the dairy company brought four quarts of milk to the said premises in a can which was not locked or sealed, and laid it on the counter. A servant of the appellants then filled the churn from the can, and poured the remainder of the milk into a jug which was sent to the kitchen. The learned magistrate was of opinion that an abstraction of cream had taken place and that the appellants had sold the milk so altered without disclosure of the alteration. He therefore convicted and fined the appellants.

Sir *E. Clarke*, Q.C. (*J. P. Grain* and *Foà* with him) for the appellants.—Even assuming that abstraction had taken place—of which no evidence was given except the poor quality of the milk—the learned magistrate was wrong in convicting the appel-

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lants. Since the case of *Dyke v. Gower* (65 L. T. Rep. 760 ; (1892) L. Rep. 1 Q. B. 220) decided that *mens rea* was not essential to a conviction under the latter part of the section the appellants have protected themselves by this notice, and they can do no more. They cannot disclose what they do not know.

*Channell*, Q.C. (*Courthope-Munroe* and *Atkin* with him).—The authorities show that *mens rea* is immaterial in cases of this kind. [Lord RUSSELL, C.J.—What evidence is there of any abstraction at all?] Abstraction must mean more than a mere taking away. The object of the legislature was to prevent the sale of a deteriorated article, as shown by sect. 6 of the Act, which is correlative with sect. 9. Abstraction must be inferred from the result. [WILLS, J.—The deficiency of cream might have arisen from the original poor quality of the milk.] The evidence of the dairy company was to the contrary. Then the appellants have failed to make disclosure of the alteration. The notices amount at most only to saying that they do not know whether the milk is altered or not.

Sir *E. Clarke*, in reply, cited *Gage v. Elsey* (58 L. T. Rep. 221 ; 10 Q. B. Div. 578), *Pope v. Tearle* (L. Rep. 9 C. P. 499).

Lord RUSSELL, C.J.—I should be very reluctant to say anything which might have the effect of weakening the operation of a salutary Act of Parliament, but I cannot help thinking that in this case the zeal of the inspector outran his discretion, and it seems to me that, looking at all the circumstances, as perhaps they were not known to him when this prosecution was entered upon, he would have been well advised to abandon it ; because I do not think it is possible to doubt that Messrs. Spiers and Pond did everything that they could reasonably be expected to do to comply with the Act. That, however, does not conclude the matter, because the further question still remains whether, although they did all they could to comply with the Act, they did actually comply with it. The learned magistrate without reserving any precise point for our consideration, has left to us the general question whether the appellants were properly convicted. It becomes necessary, therefore, to recapitulate the facts which were in evidence before him. [After going through the facts as set forth above, the learned Chief Justice continued :] The magistrate came to the conclusion that there had been abstraction in fact, and we are left to grope about for the question of law which we are to determine. The ground on which the magistrate concluded that abstraction had taken place seems to have been this, that it was supposed, in order to account for the state of the milk when analysed, that the person who poured the milk first into the churn and then into the jug, poured it in such a way that the effect was to leave a larger quantity of cream in the portion which went into the kitchen jug. It seems to me that the evidence hardly warrants such a supposition, because, if the milk was in a proper state when brought by the dairyman

it could not have stood long enough to cause a difference between the portion poured into the churn and the portion poured into the jug. However, I take it that we must assume it was admitted that there had been an abstraction so as to cause the milk to be "altered" within the meaning of sect. 9 of the Food and Drugs Act. I do not feel called upon to refer to the cases which have been cited, the principal one being *Dyke v. Gower* (*ubi sup.*). I feel, speaking for myself, no doubt that it is not necessary to establish the existence of a *mens rea* in cases like the present, but that if the article in its altered state has been sold by the vendor, whether innocently or not, without disclosure of the alteration, an offence against this section has been committed. As to what constitutes an "abstraction," I have great difficulty in realising how, in dealing with such an article as milk in an ordinary way, one ought to come to the conclusion that, if there was a smaller percentage of cream in the glasses last served, that was an "abstraction." However, as I have said, that is not the point before us, and I now come to what is the real point. Can it be said that the appellants made an adequate disclosure of the altered state of the milk within the meaning of the word in the latter part of the section? On the whole, and not without hesitation, I have come to the conclusion that Messrs. Spiers and Pond did make the necessary disclosure. It is conceded that they would not be bound to disclose the precise character of the alteration. For example, they need not say that the amount of fatty matter abstracted was 10 per cent. So much is conceded; but it is contended that they are bound to disclose the fact of there being some alteration. Now what have the appellants done in this case? In the first instance, when a customer gets a glass of milk he finds on the glass these words, "Not guaranteed as new or pure milk, or with all its cream. See notices." Now those words do not, of course, amount to a notice of an alteration in the milk; they do, however, constitute a warning that it may have been altered. But in my opinion the other notices to which the purchaser is referred do go farther. Now, part at least of this notice is framed with reference to another section of this same Act. [The learned Chief Justice read the milk notice set out above, and continued:] Now what is the meaning of that notice? Does it not in common sense mean this: We are dealing with an article about which it is impossible to predicate that each glass contains all its proper ingredients, and consequently we do not sell it to you as milk which has had nothing abstracted from it? It may be that this is not such a disclosure as the statute appears to contemplate. But, in my judgment, it would be a slavish adherence to the letter, and a disregard of the spirit of the enactment if a person who had given such a notice as that which I have read were to be held liable just as if he had made no disclosure at all. My hesitation arises solely from the particular words used by the section, but I have come to the conclusion that we shall be doing

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no violence to the statute in holding that its requirements have been substantially complied with in this case.

WILLS, J. concurred.

Solicitors for the appellants, *H. J. and T. Child*.

Solicitor for the respondent, *Matthew Hale*.

### QUEEN'S BENCH DIVISION.

*Friday, June 5, 1896.*

(Before CAVE and WILLS, JJ.)

THE V. V. BREAD COMPANY (apps). v. STUBBS (resp.). (a)

*Sale of bread—Sale otherwise than by weight—“ French or fancy bread ”—Usually so sold—3 Geo. 4, c. 106, s. 4; and the Bread Act, 1836 (6 & 7 Will. 4, c. 37), s. 4.*

*Bread, though it be made by a different process or of better materials than ordinary household bread, is not fancy bread within 6 & 7 Will. 4, c. 37, if it be similar in size, shape, and appearance to ordinary household bread as usually sold, and therefore it must be sold by weight.*

*The appellants manufactured a superior kind of bread. The chief difference between it and ordinary household bread was that a particular yeast, the nature of which was a trade secret, was used in its production. It was sold in loaves which, in size, shape, and appearance, resembled ordinary loaves of household bread. These loaves were not sold by weight. The respondent summoned the appellants before the justices for breach of sect. 4 of 3 Geo. 4, c. 106 (similar to sect. 4 of 6 & 7 Will. 4, c. 37), and the justices convicted, holding that the appellants' bread was not fancy bread, and should therefore be sold by weight. On appeal by special case :*

*Held, that the conviction was right.*

**S**PECIAL case as follows :—

1. This is a case stated by us the undersigned being certain of Her Majesty's justices of the peace in and for the county of London, being a court of summary jurisdiction sitting in a petty

(a) Reported by J. A. STRAHAN, Esq., Barrister-at-Law.

sessional court-house under the statutes 20 & 21 Vict. c. 43, and 42 & 43 Vict. c. 49, upon the application in writing in due course of the appellants who were dissatisfied with our determination as being erroneous in point of law as hereinafter stated, and who have duly entered into a recognisance as required by statute.

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2. At the Sessions-house, Clerkenwell-green, a complaint was preferred before us by John Pemperton Stubbs, an inspector of weights and measures to the London County Council (hereinafter called the respondent), against a company known as the "V. V. Bread Company Limited" (hereinafter called the appellants), under the statute 3 Geo. 4, c. 106, s. 4, for that they the aforesaid company, on the 18th day of October, 1895, did unlawfully sell or cause to be sold bread in other manner than by weight, contrary to the provisions of the said statute, which said complaint was heard by us on the 8th day of February, 1896.

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*fancy*"—  
*Sale otherwise*  
*than by*  
*weight*—  
3 Geo. 4,  
c. 106, s. 4;  
6 & 7 Will. 4,  
c. 37, s. 4.

3. Upon the hearing of the said complaint it was proved or admitted before us that two loaves of bread, each in size, shape, and appearance resembling a half-quartern loaf, were sold at the premises of the appellants on the 18th day of October, 1895, not by weight; that each loaf was 1oz. 15drs. short of 2lbs. in weight, the standard weight of a half-quartern loaf.

4. That at the time such sale was questioned the appellants claimed that the bread sold was fancy bread within the meaning of the proviso of 3 Geo. 4, c. 106, s. 4, but nothing was said as to its being fancy bread at the actual time of the sale.

5. That each of the loaves had the letters "V. V." stamped upon it.

6. That the "V. V." bread was made of flour with yeast, which yeast is made by the appellants themselves on their premises fresh every day, by a process which the appellants described as a trade secret, and as a different and distinct process to that employed in the manufacture of ordinary yeast. No evidence was given as to what the said process was, but the appellants offered to disclose it *in camera*. That an ingredient in the process is Hungarian barley, which is not used in the making of ordinary yeast. That the cost to the appellants of such yeast was 1s. 6d. a pound, whereas the price of ordinary yeast varies from 5d. to 8d. a pound.

7. That the secret of its manufacture was discovered eight years ago, that the bread produced by the process was so different to ordinary bread that the appellant company was formed to mark the discovery. That the "V. V." bread similar to the loaves in question had never been sold by weight, but that cottage loaves made by the appellants with slightly different materials, had always been kept up to 2lbs. in weight.

8. It was further proved that the "V. V." bread was not sold in ordinary bakers' shops, but only in confectioners' and dairy shops.

9. Upon the evidence the appellants contended that the two



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loaves were superior in quality to the ordinary household bread, and were properly described as bread usually sold under the denomination of fancy bread at the time of the passing of the statute 3 Geo. 4, c. 106, s. 4, and that therefore they were entitled to sell the bread without previously weighing the same. That if the correct view of the meaning of the proviso of the said Act, sect. 4, was that it meant bread usually sold at the time of the alleged offence as fancy bread, that still upon the evidence the bread was bread properly described as bread usually sold under the denomination of fancy bread on the 18th day of October, 1895, and cited the cases *Reg. v. Wood* (L. Rep. 4 Q. B. 562); and the *Aerated Bread Company Limited v. Gregg* (L. Rep. 8 Q. B. 355) in support of their contention.

10. We found as a fact that the bread in question was not such as was usually sold under the denomination of French or fancy bread, and except as to the yeast employed it was similar in all respects to what is now known as “ordinary household bread,” and we held upon the facts above stated, and after considering the aforesaid cases, that the bread in question could not be described properly as fancy bread, and fined the appellants 40s. and 5 guineas costs.

The questions for the Court are :

1. Whether the proviso to sect. 4 of 3 Geo. 4, c. 106, means bread sold at the time of the passing of the said Act as fancy bread.

2. Whether, if the proviso means bread sold at the time of the alleged offence as fancy bread, we were right in holding the bread in question could not be properly described on the 18th day of October, 1895, as fancy bread within the meaning of the proviso.

If our ruling on either of these points was wrong, the conviction is to be quashed; if not, the conviction is to stand.

Sect. 4 of the private Act, 3 Geo. 4, c. 106, is identical with sect. 4 of the Bread Act, 1836 (6 & 7 Will. 4, c. 37), which is as follows :

From and after the commencement of this Act all bread sold beyond the limits aforesaid, shall be sold by the several bakers or sellers of bread respectively beyond the said limits by weight, and in case any baker or seller of bread beyond the said limits aforesaid shall sell or cause to be sold bread in any other manner than by weight, then and in such case every such baker or seller of bread shall for every such offence forfeit and pay any sum not exceeding forty shillings, which the magistrate or magistrates, justice or justices, before whom such offender or offenders shall be convicted, shall order and direct: Provided always, that nothing in this Act contained shall extend or be construed to extend, to prevent or hinder any such baker or seller of bread from selling bread usually sold under the denomination of French or fancy bread, or rolls, without previously weighing the same.

Lord Coleridge, Q.C. (with him Biron) for the appellant company.—As to the first question here involved the decisions are at variance. In *Reg. v. Wood* (20 L. T. Rep. 654; L. Rep. 4 Q. B. 559) it was held that the words “bread usually sold under the denomination of French or fancy bread” did not

include bread so sold at the passing of the Act, it not so sold at the time of the alleged offence; while in *The Aerated Bread Company Limited v. Gregg* (28 L. T. Rep. 816; L. Rep. 8 Q. B. 355), this view was dissented from. The questions here propounded by the justices seem to indicate that the bread here in question would have been fancy bread at the passing of the Act, but is not now, since they declare their conviction is to be quashed if the words of the Act refer to fancy bread as so sold at the passing of the Act. It is submitted that this is fancy bread at the present time. It is made of different materials from ordinary household bread, and is of superior quality to household bread. The appellants cannot possibly sell it at the same price as household bread ordinarily is sold. The nature of the materials used is given by Lord Blackburn in the *Aerated Bread Company* case as a test for deciding whether bread is or is not fancy bread.

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*H. Ivory*, for the respondent, contended that the object of the Act was to prevent buyers of bread being misled as to the amount of bread they were receiving. For this purpose it is all important that if bread is sold in pieces which, in size, shape, and appearance, resemble quartern or half-quartern loaves, they should be of that weight. The justices have found that these loaves resemble quartern and half-quartern loaves. Such being the case, it is submitted that, whatever their quality, they were not fancy bread. Fancy bread means bread so different in appearance from ordinary bread as to suggest nothing as to its weight.

Lord Coleridge, Q.C. in reply.

CAVE, J.—I am of opinion that in this case the conviction must stand. The first point which the magistrates decided they were warranted in deciding as they did by the *Aerated Bread Company v. Gregg*, and no question arises upon that, or no real substantial question. But with regard to the second point the question arises whether this particular bread was fancy bread within the meaning of this clause, or of this proviso. Although the magistrates have expressed themselves oddly, I take it that what they meant to say was this: The loaves which the appellants sold were in size, shape, and appearance similar to half-quartern loaves, and the only difference between them and the half-quartern loaves of the ordinary kind was that they were alleged to be made, and, we will take it, were made, with yeast of a superior quality. The article produced, however, resembled a half-quartern loaf in size, shape, and appearance. Now it seems to me that when the article produced, no matter what may be the materials used in the production—of course if they made it of the materials used in making a plum cake it would not be bread at all, but assuming it is made of the ordinary materials of which ordinary household bread is made with an improved kind of yeast used for the purpose—is the same in shape, size, and appearance to the ordinary half-quartern loaf, it is not fancy bread, and to come within the proviso as to fancy bread it must be made of a different shape, size, and appearance, so that anyone will see at

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*Sale otherwise*  
*than by*  
*weight*—  
3 Geo. 4,  
c. 106, s. 4;  
6 & 7 Will 4,  
c. 37, s. 4.

once that it is not the ordinary half-quartern loaf of commerce. Nor is there any hardship in holding that they are bound to do this, if this is the true view of the law, because all that follows is that they must sell it by weight. It does not at all follow that they are bound to sell it at the same price per pound as the other household bread is sold at. If they like to tell their customers, “We are charging you a penny or a halfpenny in the pound more because our half-quartern loaf is made of a superior kind of yeast to that used in the common loaves,” why they are perfectly justified in doing so and no offence is committed; but it seems to me that, so long as they do manufacture their loaves of the size, shape, and appearance of half-quartern loaves, they must sell them by weight; and that they are not to run them against the ordinary half-quartern loaf so to speak by selling not by weight, and by so making a gain get back some of the extra expenditure on the improved yeast by a reduction in the weight of the loaf sold. I think that is really what the magistrates intended to ask us—if it is, in shape, size, and appearance, to all intents and purposes, a half-quartern loaf, is it to be called fancy bread because it is made of a superior kind of yeast? I think the proper answer to that is no; it is not to be called fancy bread under these circumstances. If you want to sell it as fancy bread make it in fancy bread shape, or at any rate, if there is no shape that can be called fancy bread shape, make it in a shape which is different in appearance from the half-quartern loaf, so that no one when he buys it will be under the impression that he is getting an ordinary half-quartern household loaf. As long as you do that you will be right; but as long as on the contrary you make it of the size, shape, and appearance of a half-quartern loaf (which is the important matter), though you may use an improved process as in the *Aerated Bread Company's* case, or a more expensive kind of yeast as in this case, still it is not fancy bread. It is merely an ordinary half-quartern loaf, and you must sell it by weight, and not sell it by the lump.

WILLS, J.—I am of the same opinion. With regard to the first point I really do not know, after reading the case again, what the magistrates did decide, and I do not think it is of very great consequence, because whichever way you read the Act the test which is laid down in the *Aerated Bread Company's* case is the one to be applied, and that is that, in order to make it fancy bread, the bread in question must be something which to the eye is so distinct from ordinary household bread that it is not liable to be confounded with it by those who did not know the intricacies of the trade. The state of the authorities with regard to the question of whether the test to be applied is what was fancy bread in 1823, or what was fancy bread at the time of the offence, is this: The case of *Reg. v. Wood* is an express authority that the proper test is what is fancy bread at the time of the transaction which is called in question. The subsequent case intimated a doubt as to whether this was right, but it has never

been overruled, and as the authorities stand it is the law. I must add that it seems to me a far more practical view of the statute than the notion that the enactment is to be interpreted as setting up a standard of comparison which as time went on was perfectly certain to be incapable of proof, and that in reference to a matter which would be of perpetual recurrence. It appears to me, therefore, that the magistrates have arrived at the right conclusion.

*Appeal dismissed.*

Solicitors for the appellants, *Carr and Son.*

Solicitor for the respondent, *Blaxland.*

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3 Geo. 4,  
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## QUEEN'S BENCH DIVISION.

*Tuesday, April 21, 1896.*

(Before Lord RUSSELL, C.J., and WRIGHT, J.)

THE COMMISSIONERS OF POLICE v. CARTMAN. (a)

*Licensing Acts—Intoxicating liquor—Sale by barman to drunken person contrary to instructions—Liability of licensee—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 13.*

*The licensee of a licensed house gave instructions to his barmen not to sell drink to drunken persons. A barman, during the absence of his master, sold drink to a drunken person, although his attention was called to the fact that the man was drunk.*

*Held, that, as the act of the barman in selling the drink was within the ordinary scope of his employment, the licensee was liable for such act, and was, therefore, guilty of the offence under sect. 13 of the Licensing Act, 1872, of selling intoxicating liquor to a drunken person.*

CASE stated by Mr. Vaughan, metropolitan police magistrate, sitting at Bow-street.

The respondent, the landlord of the Coach and Horses Public-house, 323 and 325, Strand, was summoned for that, being a licensed person, he did on the 14th day of October, 1895, unlaw-

(a) Reported by W. W. ORR, Esq., Barrister-at-Law.

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fully sell intoxicating liquor to a drunken person, contrary to sect. 13 of the Licensing Act, 1872 (35 & 36 Vict. c. 94).

It appeared in the evidence that a quarter before twelve o'clock on the night of the 14th day of October a man named Evans, who was undoubtedly drunk, entered the public-house with two women, that a police constable called the attention of the door-porter to the fact that the man was drunk; that the porter went and spoke to the barman, who drew and placed one glass of beer before the drunken man, who took it and paid for it; that the porter took it from his hand and placed it before the barman, who replaced it before Evans, who again took it, and drank it up. The police constable thereupon said to the barman, "You could see that he was drunk;" to which the barman replied: "If you saw that he was drunk, why did you not put him out?"

The landlord, who was not present, was sent for by the constable, and on making his appearance he inquired of the porter why he had admitted the drunken man; upon which the porter replied, as the fact was, that he had spoken to the barman twice.

The defendant was called, and he stated that at the time of the occurrence he was at a considerable distance away, and out of sight of the bar, and that he had given precise instructions to the door-porter and the barmen to refuse drink to drunken persons or to persons in a state of semi-intoxication.

Upon this state of facts the magistrate was of opinion that, as the landlord was not present and was ignorant of the act of his barman, and as there had been no delegation of authority to the barman to supply drink to a drunken person, but on the contrary he had been prohibited from so doing, and as the door-porter, who was equally in charge of the premises with the barman, had exercised his authority in endeavouring to prevent the supply of drink to Evans, he was not guilty of the offence charged against him, and he dismissed the summons.

The question which the magistrate submitted to the Court was whether he was absolutely bound to convict upon the authority of the cases of *Cundy v. Le Cocq* (51 L. T. Rep. 265; 13 Q. B. Div. 207) and *Bond v. Evans* (16 Cox C. C. 461; 59 L. T. Rep. 411), or whether he was at liberty to take into consideration the circumstances hereinbefore set out, as the circumstances were considered in the case of *Somerset v. Hart* (12 Q. B. Div. 360).

Sect. 13 of the Licensing Act, 1872 (35 & 36 Vict. c. 94), provides:

If any licensed person permits drunkenness, or any violent, quarrelsome, or riotous conduct to take place on his premises, or sells any intoxicating liquor to any drunken person, he shall be liable to a penalty not exceeding for the first offence ten pounds, and not exceeding for the second and any subsequent offence twenty pounds.

*Danckwerts* for the appellants.—The learned magistrates ought to have convicted the respondent. The sale by the barman to the drunken person was an act done within the scope of his



ordinary employment and authority, and the licensee is liable for what the barman does within the ordinary scope of his employment: (*Cundy v. Le Cocq*, 51 L. T. Rep. 265; 13 Q. B. Div. 207). That case decides that, where liquor is sold to a drunken person, it is immaterial whether the person who sold it knew, or did not know, whether the person to whom it was sold was or was not drunk, and that the prohibition to sell to a drunken man is absolute. The contention is that this is one of a class of things which is absolutely prohibited. Under the Licensing Acts it has always been held, even where knowledge is a necessary ingredient, that, if a thing is done by a servant contrary to the Act, it is sufficient if the servant has a guilty mind. There is also another principle on which a conviction in this case might be based, namely, that where a duty is cast upon a man by statute he cannot get rid of that duty by delegating it to another. If a publican goes away from his house altogether and leaves a barman in the bar, and gives the barman general instructions not to do particular acts, that does not relieve the publican from liability for those acts; and in fact the only person who can be punished in such cases is the licensed person himself: sect. 62. In *Reg. v. Stephens* (14 L. T. Rep. 593; L. Rep. 1 Q. B. 702), an owner of certain works was convicted for a nuisance caused by his servants without his knowledge, and contrary to his orders. So, in *Bond v. Evans* (16 Cox C. C. 461; 59 L. T. Rep. 411), a licensed person was convicted under sect. 17 of this Act, and was held to be liable for gaming that was allowed to be carried on in his skittle-alley by the person in charge of the same, although such gaming was contrary to the instructions of the master. *Crabtree v. Hole* (43 J. P. 799) is to the same effect. Cockburn, C.J. there says: "If the licensed holder employs one who does not do his duty, it is the same as if he himself did not do the duty." He also referred to *Sherras v. De Rutzen* (18 Cox C. C. 157; 72 L. T. Rep. 839; (1895) 1 Q. B. 918). [He was stopped by the Court.]

*S. Lynch* for the respondent, submitted that the view taken by the learned magistrate was right. The true construction to be placed on the section was that, although it states that the act shall not be done, yet the fact that the act has been done does no more than raise a *prima facie* case against the publican which he may rebut, and which the magistrate had held that he had rebutted. The barman sold the liquor not only outside the scope of his authority, but against the express instructions of the master, which instructions were to exclude all drunken or semi-drunken persons. In *Newman v. Jones* (55 L. T. Rep. 327; 17 Q. B. Div. 132), where liquor was sold by the steward of a club who, in selling it, acted contrary to the orders of the appellants and without their knowledge, it was held that the conviction of the appellants was wrong, as they were not responsible for the act of their steward. That case was exactly similar to the present. So, in *Somerset v. Hart* (12 Q. B. Div. 360), which

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was a prosecution under sect. 17 for allowing gaming on licensed premises, Lord Coleridge, C.J. said : " Where no actual knowledge is shown there must, as it seems to me, be something to show either that the gaming took place with the knowledge of some person clothed with the landlord's authority, or that there was something like connivance on his part." [Lord Russell, C.J.—These gaming cases obviously fall under an entirely different category, and really throw no light on this question.] It was competent for the magistrate to find, as he has really done here, that the barman was acting outside the scope of his authority; and if the barman gets express instructions not to sell to any person or class of persons, if he sells to that class of persons, he ceases to act within his authority.

Lord Russell, C.J.—The question that arises in this case is whether or not the learned magistrate was bound to convict the respondent of the offence of selling intoxicating liquors to a drunken person contrary to the 13th section of the Licensing Act of 1872. In considering that question one has to observe what is the object of this Act, and to consider how far its object would be affected or defeated if the construction, which the learned magistrate seems to have been inclined to put upon it, were to be given to it. It is intended, in the interests of public order, to prevent the sale of intoxicating liquor to drunken persons. That is the object. The persons from whom the drunken persons can alone get the intoxicating liquor are licensed persons. How do they carry on their business? From the very nature of the case they must to a large extent carry on their business by and through other persons. In some cases no doubt the actual licensee may be in the actual control and conduct of his own business, but in the great majority of cases that is not so. They depute their business, beyond a very general supervision, to other persons. Are they or are they not to be liable for the acts of those other persons? They are; subject to this qualification, that such acts must be within the scope of their employment to render the principal liable; and the scope of the authority receives limitation from the scope of the employment, and it seems to me that within the scope of the employment authority is given to the *employé*. Does it make any difference for the purpose of this section that by private instructions, in the interest of good order, the licensee says to the servant, " Observe the law; do not sell to drunken persons " ? I do not think it does. I think, if that effect were to be given to it, this section, addressed to the achievement of a very proper object, would be entirely defeated. To take this illustration—a very common one—of a sporting publican who spends much the greater part of his time attending race meetings all over the country, who leaves behind him a barman or manager in charge of the business of the public-house, is it to be said that there is no remedy under the Act if drink is sold by the person so charged with the responsible duty of managing the place to any number

of drunken persons? It is apparently clear that there is no machinery by which the person actually selling (being the agent or servant of the licensee) can be convicted of that offence; and the penalty which the statute fixes is recoverable, as I understand, from the licensee only. It seems to me it is impossible to give to this section the narrow construction contended for by the respondent. In one sense, no doubt, this offence is on the confines of a criminal offence, but I think, looking to the whole scope and object of this Act, and to the framing of this section, that, wholly apart from authority, which I think is absolute upon the point, it was intended that the responsibility should be put directly upon the licensee for any of the acts there mentioned, done within the scope of the authority of the *employé*. I do not think it necessary to refer to the authorities beyond saying this, that some of those which have been referred to on behalf of the respondent in my judgment have no bearing upon this point—I mean the cases coming under the Gaming Acts. Nobody can contend that a barman, or person in charge of a public-house, has as part of his implied authority any sanction from the master to the carrying on of gaming in any form. I may say that I do not think there is any real hardship in this case, because if, as apparently was the case, the magistrate was convinced that the publican honestly endeavoured to comply with the law, and intended that it should be fulfilled, and if he has only been made liable for the acts of his servant, he (the magistrate) can take that into account by imposing a small fine, and he can also, if he regards it as a case in which the moral responsibility is not with the master, abstain from directing that the conviction shall be recorded against the man. But I think it would be indeed a thing of very evil consequence if we felt ourselves obliged to hold in the circumstances of the case that the respondent ought to be held not to be guilty of the offence charged by the section. Upon that ground I think the case should go back to the learned magistrate.

WRIGHT, J.—I am entirely of the same opinion as regards the construction to be placed upon this section of this Act of Parliament.

*Appeal allowed with costs. Case remitted to the magistrate to convict.*

Solicitors for the appellants, *Wontner and Sons*.

Solicitor for the respondent, *G. P. R. Burgess*.

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## CROWN CASES RESERVED.

*April 25 and June 16, 1896.*

(Before Lord RUSSELL, C.J., POLLOCK, B., HAWKINS, CAVE,  
and WILLS, JJ.)

REG. v. WILLIAM LILLYMAN. (a)

*Practice—Indecent assault—Evidence—Complaint by prosecutrix made in absence of prisoner—Particulars of complaint admissible—Ground on which admissible.*

*On the trial of an indictment for an assault on a female, not only the fact that the prosecutrix made a complaint immediately after the occurrence, but the particulars of her statement, even if made in the prisoner's absence, are admissible. The fact that the prosecutrix made a complaint is admissible as evidence negating consent on her part; and therefore the whole statement ought, in the interest of the prisoner, to be given in evidence.*

CASE stated by Hawkins, J.

The prisoner was tried before me at the last Nottingham Assizes upon an indictment containing three counts: the first charging him with an attempt to have carnal knowledge of one Florence Sevestre Green, a girl above the age of thirteen and under the age of sixteen years; the second, with an assault upon the same girl with intent to ravish and carnally know her; the third, with an indecent assault upon the same girl.

The girl, Florence Green, was called in support of these charges. She deposed to the acts complained of having been done without her consent.

Counsel for the Crown tendered evidence in chief of a complaint made by the girl to her mistress in the absence of the prisoner very shortly after the commission of those acts, and proposed to ask the details of that complaint as made by the girl.

Counsel for the prisoner objected to the admission of such evidence. I overruled the objection and admitted it, and the girl's mistress then deposed to all the girl had said respecting the prisoner's conduct towards her.

The jury found the prisoner guilty on the first count, and I sentenced him to one month's imprisonment with hard labour

(a) Reported by A. A. BETHUNE, Esq., Barrister-at-Law.

subject to the opinion of this Court upon the question, was the evidence so admitted rightly admitted? If it was, the conviction is to be affirmed, otherwise it is to be quashed.

I respited the execution of the sentence, and admitted the prisoner to bail, pending the decision of the Court.

N.B.—The cases bearing upon this question are all to be found collected in Roscoe's Criminal Evidence under the head "Hearsay," and in Archbold's Criminal Pleading and Evidence. They are conflicting; I have therefore reserved this case for consideration, in the hope that the law may be settled upon a point which is of daily occurrence.

*J. E. Fox* for the prisoner.—The fact that the prosecutrix made a complaint was admissible in evidence, not as part of the *res gestæ*, for it was made after the event, but because whether what was done to her was done with or without her consent was a material issue on the counts charging assault. This principle admitted, however, the fact only that a complaint was made, and not the details of the statement made by the prosecutrix in the absence of the prisoner. He cited *R. v. Brazier* (1 East P. C. 444); *R. v. Clarke* (2 Starkie, 243); *R. v. Wink* (6 C. & P. 397); *R. v. Megson* (9 C. & P. 420); *R. v. Osborne* (C. & M. 622); *R. v. Nicholas* (2 C. & K. 246); *Reg. v. Gutteridge* (9 C. & P. 471); *Reg. v. Beddingfield* (14 Cox C. C. 341); *Reg. v. Walker* (2 M. & K. 212); *Reg. v. Little* (15 Cox C. C. 319); *Aveson v. Lord Kinnaird* (6 East, at p. 193); *Reg. v. Foster* (6 C. & P. 325); and *Reg. v. Wood* (14 Cox C. C. 47).

Sir *R. Finlay* (S.-G.), *H. Sutton*, and *Cracroft* for the Crown.—The whole of the prosecutrix's statement was properly admitted. It was admissible as negating consent by the girl to what was done, for the utterances of a woman under such circumstances were as much the natural expression of outraged virtue as the groans of a wounded man were the natural expression of physical pain. The question was, of what did the woman complain? To admit evidence of the fact that she made a complaint without its being disclosed what the complaint really was, would be to place a dangerous weapon in the hand of an unscrupulous prosecutrix, for a jury would always infer the fullest. The statement in Hale P. C., vol. 1, 663, was the foundation of the rule. He referred, in addition to the cases already cited, to *Thompson v. Trevanion* (Skinn. 402); *Wright v. Doe* (7 Ad. & E. 314); *R. v. Ridsdale* (Starkie on Evidence, p. 469); *Reg. v. Lunny* (6 Cox C. C. 477); *R. v. Eyre* (2 F. & F. 579); *Reg. v. Pook* (13 Cox C. C. 172); *Reg. v. Wainwright* (13 Cox C. C. 171); *Reg. v. Beddingfield* (14 Cox C. C. 341); *Reg. v. Goddard* (15 Cox C. C. 7); Wharton's Criminal Evidence, 8th edit., s. 691; Phillips on Evidence, 10th edit., vol. 1; Stephen's Digest of the Law of Evidence, p. 159.

*J. E. Fox* in reply.

June 16.—The judgment of the Court (Lord Russell, C.J., Pollock, B., Hawkins, Cave, and Wills, JJ.) was delivered by

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HAWKINS, J.—The prisoner was tried before me at the Nottingham Assizes upon an indictment containing three counts. The first charged him with an attempt to have carnal knowledge of one Florence Sevestre Green, a girl above the age of thirteen and under the age of sixteen; the second, with an assault on the same girl with intent to ravish her; the third, with an indecent assault upon the same girl. The girl was examined as a witness in support of these charges, and deposed to the acts she complained of having been committed without her consent. For the Crown evidence was tendered in chief of a complaint made by the girl to her mistress in the absence of the prisoner very shortly after the commission of the acts charged, and it was proposed to ask the witness, called for that purpose, to state the details of the complaint in the language used by the girl. Counsel (Mr. Fox) for the prisoner objected, first, that the complaint could not be given in evidence at all; and secondly, that even if the fact of a complaint having been made was admissible, the particulars of it could not be elicited in the examination in chief. I overruled both objections, and the complaint with full particulars was deposed to by the witness. The jury found the prisoner guilty on the first count only. That, however, does not affect the question we have to decide, because, although to establish guilt upon that count it was not essential to prove want of consent, yet, as the girl had emphatically stated, that whatever was done was against her will, the reasons which in our opinion, as it will appear, made the complaint evidence upon the second and third counts were equally applicable to the first. It is necessary in the first place to have a clear understanding as to the principles upon which evidence of such a complaint not on oath, nor made in the presence of the prisoner, nor forming part of the *res gestæ*, can be admitted. It clearly is not admissible as evidence of the facts complained of; those facts must therefore be established, if at all, upon oath by the prosecutrix or other credible witness. And, strictly speaking, evidence of them ought to be given before evidence of the complaint is admitted. The complaint can only be used as evidence of the consistency of the conduct of the prosecutrix with the story told by her in the witness-box, and as being inconsistent with her consent to that of which she complains. In every one of the text-books proof of complaint is treated as a most material element in the establishment of a charge of rape or other kindred charge. In Hawkins' Pleas of the Crown, book 1, c. 41, s. 3, it is said: "It is a strong but not a conclusive presumption against a woman that she made no complaint in a reasonable time after the fact," and in Blackstone's Commentaries, vol. 4, c. 15, p. 211, referring to the time when Bracton wrote in Henry III.'s reign, it is said, "But in order to prevent malicious accusations it was then the law that the woman should immediately after, *dum recens fuerit maleficium*, go to the next town and there make discovery to some credible persons of the injury she has suffered." Later on, at p. 213, it



said : “ And first the party ravished may give evidence upon oath, and is in law a competent witness, but the credibility of her testimony and how far forth she is to be believed must be left to the jury upon the circumstances of fact that occur in that testimony. For instance, if the witness be of good fame ; if she presently discovered the offence, and made search for the offender . . . these and the like are concurring circumstances, which give greater probability to her evidence. But, on the other side, if she be of evil fame, and stand unsupported by others, if she concealed the injury for any considerable time after the opportunity to complain ; if the place where the fact was alleged to be committed was where it was possible she might have been heard, and she made no outcry, these and the like circumstances carry a strong, but not conclusive presumption, that her testimony is false and feigned.” It is too late, therefore, now to make serious objection to the admissibility of evidence of the fact that a complaint was made, provided it was made as speedily after the acts complained of as could reasonably be expected. We proceed to consider the second objection, which is that the evidence of complaint should be limited to the fact that complaint was made without giving any of the particulars of it. No authority binding upon us was cited during the argument, either in support of or against this objection. We must therefore determine the matter upon principle. That the general usage has been substantially to limit the evidence of the complaint to proof that the woman made a complaint of something done to her, and that she mentioned in connection with it the name of a particular person, cannot be denied ; but it is equally true that judges of great experience have dissented from the limitation ; and those who have adopted the usage have ever carefully discussed or satisfactorily expressed the ground upon which their views have been based. *Rex v. Brazier*, decided in 1779, is the earliest authority I propose to cite as throwing any valuable light upon the subject. Before that case there existed in the minds of some of the judges an impression that, although a child incapable of understanding the nature and obligation of an oath was not a competent witness, nevertheless, upon a charge of rape or assault with intent to commit that crime, she might and ought to be heard without oath to give the court information ; and that upon unsworn information the accused person might be convicted. In *Rex v. Brazier*, tried before Buller, J., and reported in East P. C. 443, and Leach C. C. 198, that learned judge went still further, and admitted as evidence such information as the testimony of third persons to whom it was first given. There the prisoner was indicted for an assault with intent to commit a rape upon a girl under seven years of age. The girl herself, by reason of her then presumed incompetency to be sworn, was not produced as a witness on the trial ; inasmuch, however, as she had on the afternoon of the day on which the outrage was charged to

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have been committed, immediately on her coming home made a statement to her mother (though not in the presence of the prisoner) of the full particulars of the alleged assault, her mother was allowed to prove this statement, and it was left to the jury as evidence of the facts complained of, and practically upon it the prisoner was convicted. The case was afterwards twice considered by the judges; upon the first occasion two of them (Gould and Willes, JJ.) expressed a view that the girl's statement was admissible as part of the transaction itself; this view was not, however, adopted by the rest of the judges, and on the second occasion they were all unanimously of opinion that no testimony whatever could legally be received except upon oath, and that no evidence on oath of the commission of the crime having been given, the evidence of the girl's statement to her mother ought not to have been received. This case, therefore, in effect, decided that the mere complaint is no evidence of the facts complained of, and that the admissibility of the evidence of the complaint is dependent upon proof of the facts or other legalised testimony. It is obvious, however, that, upon the assumption that the complaint was admissible in evidence, it was, in the case referred to, admitted with all its details. When and for what reason the proof of the complaint was first limited to answers to such questions as these: "Did she make a complaint?" "Did she mention a name?" "Whose name?" &c., I have not been able to discover. *Reg. v. Clarke* (2 Stark. 243) is cited in several text-books on Criminal Evidence as an authority, that in proving the complaint the particulars of it cannot be given in evidence, but the ruling of Holroyd, J. certainly does not go to that extent. That learned judge ruled, indeed, that the fact of the woman having made a complaint was admissible in evidence, as also a description of her state and appearance at the time. But he did not rule that the particulars of such complaint could not be given in evidence. He only ruled, and in our opinion correctly ruled, that they were not evidence of the truth of her complaint or of the statements of fact on which it is based. In this sense the ruling is cited in Phillips on Evidence, p. 204; and in this sense we adopt it as settled law. That case is clearly not an authority for the limitation of the evidence of the complaint. In *Reg. v. Walker*, 1839 (2 Moo. & R. 212), on the trial of a person for assaulting a female with intent to commit a rape, Parke, B. permitted a relative of the woman to whom she had made immediate complaint to give evidence generally that such complaint was made; but refused to allow the witness on examination in chief to state the particulars of it, upon the ground that, according to the usage which had been obtained, such particulars should not be given, but that it should be left to the prisoner's counsel to bring the details of the complaint before the jury if he thought fit so to do. It is clear, however, that the learned Baron did not approve of that usage, for he prefaced his ruling by saying, "The sense of the thing certainly is that the

jury should, in the first instance, know the nature of the complaint made by the prosecutrix, and all that she then said, but for reasons which I never could understand the usage has obtained." *Reg. v. Megson and others*, 1840 (9 C. & P. 420), was an indictment against the prisoner for a rape on a woman who had since died without having made any admissible depositions which could be laid before the jury. That she had been ravished by somebody was beyond all question. On the part of the prosecution it was sought to put in evidence a detailed account of the transaction in the shape of a complaint by the woman with a view by it alone to show the prisoners to be the guilty persons. Rolfe, B. rejected it, saying, "There is a wide difference between receiving such statements as confirmatory of the prosecutrix's credibility in a charge of rape on which she is examined as a witness, and a case like the present, where the complaint made is to be received as independent evidence." In summing up he added, "In ordinary cases of rape, when a witness describes the outrage in a witness-box, evidence of her complaint soon after the occurrence of the outrage is properly admissible to show her credit and the accuracy of her recollection." This case is in our opinion improperly cited as an authority for excluding the particulars of the complaint. We look upon it only as a ruling that the particulars could not be used as independent evidence of the facts alleged to the same effect as was, according to our interpretation, the ruling in *Rex v. Clarke*. The last few words of the summing up rather indicate that Baron Rolfe's view was, that for the purpose of confirmation merely the details ought to be given; how otherwise, one might ask, could the "woman's credit and the accuracy of her recollection" be tested by it? *Rex v. Gutteridge and others*, 1840 (9 C. & P. 471), was a very similar case. The prosecutrix was absent when the trial took place. It was sought to put in her complaint made on the following day after the alleged outrage. Parke, B. thought it safer to reject the evidence on the ground that it was not part of the *res gestæ*, but only confirmatory evidence which could not be used, as the prosecutrix had given no evidence. There is nothing in that case to suggest that the learned baron intended to rule that, if evidence of the complaint were admissible, the particulars ought to be excluded. In *Reg. v. Osborne*, 1842 (2 C. & M. 622), on an indictment for rape, the prosecutrix on oath stated that soon after the alleged outrage, and as she was returning home, she made complaint to a Mrs. Partridge, who was called as a witness to confirm her statement. The counsel for the prosecution was allowed to ask, "Did the prosecutrix make any complaint?" to which the answer was "Yes?" He was then allowed to ask, "Did she name any particular person?" to which she also said "Yes." It was then proposed by the counsel to ask, "Whose name was mentioned?" To this it was objected that the question was inadmissible upon the ground that, though the fact of

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the complaint was admissible as showing that the prosecutrix was not an assenting party, the name was an important particular as against the prisoner, and therefore could not be asked, and the ruling of Patteson, J. in the case of *Rex v. Wink* (6 C. & P. 397) (hereinafter referred to) was cited in support of the objection. In support of the question it was urged that the whole complaint was admissible as part of the *res gestæ*. Cresswell, J. ruled that the statement of the prosecutrix did not form part of the *res gestæ* (treating *Rex v. Wink* as a direct authority against the question). In the ruling we agree, but if it had been pressed upon that learned judge that the complaint in all its details was nevertheless a fact admissible for the purpose of showing consistency of conduct on the part of the woman, we doubt if he would have rejected the evidence. At all events the case cannot be taken as a ruling upon the point now under discussion, for the decision was founded entirely upon the statements not being part of the *res gestæ*. In support of the view that all the particulars of a complaint are admissible, it was pointed out that the late Sir James Fitzjames Stephen, in his Digest of the Law of Evidence, note to art. 8, says: "I heard Willes, J. rule that they were, on several occasions, vouching Parke, B. as his authority." And, after saying that Bramwell, B. had been in the habit of admitting the whole of the complaint, adds his own view that such practice is certainly in accordance with common sense. Two reported cases were brought to our attention in which such view was acted upon. In *Reg. v. Eyre* (2 F. & F. 579), tried before Byles, J., on a trial for rape the prosecutrix, being examined in chief, was asked whether she had made any complaint, and what she said. To an objection made by the prisoner's counsel, Byles, J. said: "Whatever she said immediately after the occasion, and what was said to her in answer, is equally evidence;" the latter part of this ruling is open to question. In *Reg. v. Frederick Wood* (14 Cox C. C. 46), tried before Bramwell, L.J. at Chester, the prosecutrix gave evidence that the prisoner came to a room in an inn where she was barmaid, when she was alone, committed a rape upon her, and then left the house, and that an hour and a half afterwards a customer came in to whom she made a complaint, mentioning the prisoner's name in connection with it; it was proposed for the prosecution to ask her what she said to the customer and his reply. Bramwell, L.J. said: "I shall admit the conversation; you give evidence of a complaint being made, and use the name of the prisoner, leaving it to the jury to infer that the girl said he had committed the offence we are now trying him for; I do not see why you should not give in evidence all she said when she did so complain, leaving it to the jury to judge of the value of such testimony." The girl then told in minute detail the particulars of all that had, as she alleged, been done to her by the prisoner and the customer's replies to her story. This customer was also called, and spoke again in detail as to the complaint. I am not aware of

any other cases directly bearing upon the question before us. Many others were cited, all of which we have examined, but finding they were decided upon other principles of the laws of evidence than that which governs the present case, and that they render no assistance to us in our consideration of it, we abstain from any discussion or expression of opinion upon them. After very careful consideration, we have arrived at the conclusion that we are bound by no authority to suppose the existing usage of limiting evidence of the complaint to the bare fact that a complaint was made, and that reason and good sense are against our doing so. The evidence is admissible only upon the ground that it was a complaint of that which is charged against the prisoner and can be legitimately used only for the purpose of enabling the jury to judge for themselves whether the conduct of the woman was consistent with her testimony on oath, given in the witness box, negating her consent, and affirming that the acts complained of were against her will, and in accordance with the conduct they would expect in a truthful woman under the circumstances detailed by her. The jury, and they only, are the persons to be satisfied whether the woman's conduct was so consistent or not. Without proof of her condition, demeanour, and verbal expressions, all of which are of vital importance in the consideration of that question, how is it possible for them satisfactorily to determine it? Is it to be left to the witness to whom the statement is made to determine and report to the jury whether what the woman said amounted to a real complaint? And are the jury bound to accept the witness' interpretation of her words as binding upon them without having the whole statement before them and without having the power to require it to be disclosed to them, even though they may feel it essential to enable them to form a reliable opinion? For it must be borne in mind that if such evidence is inadmissible when offered by the prosecutrix, the jury cannot alter the rules of evidence and make it admissible by asking for it themselves. In reality affirmative answers to such stereotyped questions as these—"Did the prosecutrix make a complaint" (a very leading question, by the way) "of something done to herself?" "Did she mention a name?"—amount to nothing to which any weight ought to be attached—they tend rather to embarrass than assist a thoughtful jury, for they are consistent either with there having been a complaint or no complaint of the prisoner's conduct. To limit the evidence of the complaint to such questions and answers is to ask the jury to draw important inferences from imperfect materials, perfect materials being at hand and in the cognisance of the witness in the box. In our opinion nothing ought unnecessarily to be left to speculation or surmise. It has been sometimes urged that to allow the particulars of the complaint would be calculated to prejudice the interests of the accused, and that the jury would be apt to treat the complaint as evidence of the facts complained of. Of course, if it were so left to the jury, they would naturally so

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treat it. But it never could be legally so left, and we think it is the duty of the judge to impress upon the jury in every case that they are not entitled to make use of the complaint as any evidence whatever of those facts, or for any other purpose than that we have stated. With such a direction we think the interests of an innocent accused would be more protected than they are under the present usage. For when the whole statement is laid before the jury, they are less likely to draw wrong and adverse inferences and may sometimes come to the conclusion that what the woman said amounted to no real complaint of any offence committed by the accused. Moreover, the present usage and consequent uncertainty in practice (for the usage is not universal) provokes many objections to the evidence on the part of the prisoner's counsel, and these are generally looked upon with disfavour by the jury; and the very object of confining the evidence of the complaint to the few stereotyped questions we have referred to is often defeated by a device, not to be encouraged, by which the name of the accused, though carefully concealed as an inadmissible particular of the complaint, is studiously revealed to the jury by some such question and answer as the following. "In consequence of that complaint did you do anything?" "Yes; I went to the house of the prisoner's mother, where he lives, and accused him." This seems to us an objectionable mode of introducing evidence indirectly which if tendered directly would be inadmissible. We are aware that Patteson, J. is reported in *Rex v. Wink* (6 C. & P. 397) to have suggested that such a mode of obtaining the evidence might be adopted, but we cannot help thinking that there must be some inaccuracy in the report, and the suggestion did not meet with the approval of Cresswell, J. in *Rex v. Osborne* (2 C. & K. 624), nor of Brett, J. in *Reg. v. Thomas* (13 Cox C. C. 77), nor can we approve of it. In the result, our judgment is that the whole statement of a woman containing her alleged complaint should, so far as it relates to the charge against the accused, be submitted to the jury as a part of the case for the prosecution, and that the evidence in this case was therefore properly admitted. The conviction must be affirmed.

*Conviction affirmed.*

Solicitor for the Crown, *The Solicitor to the Treasury.*

Solicitors for the prisoner, *Williams and Son*, Lincoln.



## QUEEN'S BENCH DIVISION.

*May 2 and June 2, 1896.**(Before Lord RUSSELL, C.J., POLLOCK, B., HAWKINS, CAVE, and WILLS, JJ.)*

REG. v. ERDHEIM. (a)

*Evidence—Admissibility—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52)—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71)—Bankruptcy examination—Admissions—Proof—Oral evidence as to statements made on bankruptcy examination.**The statements which a bankrupt makes in the course of his examination in bankruptcy are not, though he is examined under compulsion, to be regarded as induced by undue influence. They are, therefore, admissible in evidence against him, unless excluded by the provisions of 53 & 54 Vict. c. 71, s. 27 (2).**The provision contained in 46 & 47 Vict. c. 52, s. 17, that the notes of the examination when read over to and signed by the bankrupt may be used in evidence against him, provides merely a convenient method of proof, and does not exclude oral evidence of the statements made by the bankrupt in the course of such examination.**Semle "conduct," in the Bankruptcy Act, 1883, s. 17 (1) refers to the matters specified in sect. 28 of that Act.***C**ASE stated for the opinion of this Court by the Deputy Recorder for the city of Leeds as follows :—

1. Max Erdheim was tried before me at the Epiphany Quarter Sessions of the Peace for the city of Leeds, on the 7th day of January, 1896, upon an indictment charging him with the commission of the following misdemeanours under the Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 11, viz. :—In the first count with not discovering part of his property to the trustee in his bankruptcy (sub-sect. 1). In the second, third and fourth counts with fraudulently removing goods to the value of 10*l.* within four months before the presentation of a bankruptcy petition against him (sub-sect. 5). In the fifth count with making a material omission from a document relating to his affairs, to wit, a cash account for the period of four months before his bankruptcy (sub-sect. 6). In the sixth count with making a material omission from a document relating to his affairs, to wit, a goods account for the same period (sub-sect. 6.) In the seventh count, with

(a) Reported by A. A. BETHUNE, Esq., Barrister-at-Law.



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- attempting to account for his property by fictitious expenses (sub-sect. 12).
2. On the 3rd day of May, 1895, a petition in bankruptcy was filed against the prisoner in the County Court of Yorkshire, holden at Leeds, and a receiving order duly made thereon; and on the 20th day of May, 1895, the prisoner was adjudged bankrupt.
3. Pursuant to the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 17 the public examination of the prisoner was held before the said County Court on the 25th day of June, 1895, and by adjournment on the 9th day of July, the 23rd day of July, the 24th day of September, and the 19th day of November, 1895, respectively, upon which last day the examination was adjourned *sine die*, and had not been resumed at the date of the said trial.
4. Under sub-sect. 8 of the said sect. 17 and rule 67 of the Bankruptcy Rules 1886, the said County Court appointed William Foster Greenhalgh to take down in shorthand the evidence of the prisoner at the said public examination, and to make transcripts of the questions and answers put to and given by the prisoner at the said public examination, and those transcripts were to be the notes of the examination under the said sect. 17.
5. On each of the five days of the public examination of the prisoner, Greenhalgh took down at the said County Court, in shorthand, the evidence of the prisoner, and made transcripts of the said questions and answers. None of the said transcripts were read over to or signed by the prisoner.
6. Greenhalgh was called as a witness for the prosecution at the said trial, and proved formally the various matters stated above in paragraphs 4 and 5. As the notes of the public examination could not be used in evidence against the prisoner, the counsel for the Crown proposed to give parol proof of admissions made by the prisoner in the course of the public examination of facts tending to establish the charges contained in the indictment, and for that purpose tendered the further evidence of Greenhalgh that he might prove those admissions verbally.
7. It was objected by the counsel for the prisoner that the further evidence of Greenhalgh was not admissible on two grounds. First, that the public examination never having been completed, the prisoner might not have had an opportunity to make a complete statement and explanation with regard to everything charged against him; and, secondly, that, inasmuch as all the requirements of the said sect. 17, viz.: "Such notes of the examination as the court thinks proper shall be taken down in writing, and shall be read over to and signed by the debtor, and may thereafter be used in evidence against him," had not been complied with no other evidence could be given of any admission made by the prisoner at the said public examination.
8. I overruled both these objections. With regard to the first, that it could only appear when proof was tendered of it

whether the statement were incomplete or not, and as to this I find as a fact that no incomplete statement was given in evidence before me. And as to the second objection, that since the public examination and the notes of the prisoner's evidence then given had been properly taken in accordance with the said sect. 17, and that by law the prisoner was compelled to answer at the said public examination upon oath all questions the Court might put or allow to be put to him, whether tending to criminate him or not, and that the statute was permissive only as to making the notes evidence, the fact that those notes had not been read over to and signed by the prisoner did not exclude the ordinary rule of law that parol admissions made by a prisoner might be proved by the parol evidence of some person who heard them, and I permitted the further evidence of Greenhalgh to be given.

9. That further evidence was the verbal proof by Greenhalgh of such of the several questions to and answers by the prisoner during the said public examination as were required to be deposed to at the said trial on behalf of the prosecution and of the defence. Such proof consisted for the prosecution of admissions of fact made by the prisoner against himself material to the whole of the charges in the indictment, and for the defence of matters tending to show there was no intent to defraud.

10. In addition to Greenhalgh the prosecution called other witnesses and put in evidence the file of proceedings in the bankruptcy of the prisoner, and except what was elicited in cross-examination of the witnesses for the prosecution no evidence was given on behalf of the prisoner.

11. I left all the facts proved by Greenhalgh and the other witnesses and evidence to the jury, and they found the prisoner guilty on all the counts of the indictment. I then discharged the prisoner on recognisance of bail of himself and two sufficient securities conditioned to appear at the next quarter sessions for the city of Leeds to receive judgment.

The question of law I have reserved for the consideration of and determination by the Court of Crown Cases Reserved is whether the further evidence of Greenhalgh was legally admissible at the said trial. If it was, the conviction is to be affirmed, if not, to be quashed.

*C. Mellor* for the prisoner.—First, the statement made by a debtor on his examination in bankruptcy is a continuous narrative, and part only cannot be used, for the debtor has a right to an opportunity to explain or qualify any statement or admission which he may have made in the course of his examination. The fact that the notes were not signed shows that the examination was never completed, and that this opportunity was not afforded to the prisoner. Secondly, the principle of the common law being that no person can be called to incriminate himself, statements made by a bankrupt upon his compulsory examination would not

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be admissible as evidence against him, but for the express enactments to that effect. In *Reg. v. Scott* (15 L. J. 128, M. C.) the notes taken upon the examination of a bankrupt were admitted as evidence against a prisoner because such notes had been taken in strict conformity with the Bankruptcy Act of 1849; and so in *Reg. v. Sloggett* the examination was regular, and the notes thereof had been read over to and signed by the bankrupt as provided by the Act, and although the matter in question in that case was not matter which he could have been compelled to answer under sect. 117 of the Bankruptcy Act of 1849 (12 & 13 Vict. c. 106), yet, as the bankrupt had not objected to answer, his statement was considered to have been voluntary. A bankrupt may now, however, be examined as to his "conduct" by virtue of sect. 17 of the Bankruptcy Act of 1883 (46 & 47 Vict. c. 52), and not only as to matters which concern the disposal of his property: (*Re a Solicitor*, 25 Q. B. 17.) He cannot refuse to answer any question which may be put to him, and it is therefore necessary that compliance with the conditions under which the notes of the examination are admissible should be strictly enforced. To permit the shorthand writer to give parol evidence of what the prisoner said and to refresh his memory from the notes made at his examination, would, in effect, admit the notes themselves, although none of the conditions prescribed by the statute had been fulfilled. The only evidence of what is said by a debtor on his examination in bankruptcy are notes taken in accordance with the provisions of sect. 17 of the Bankruptcy Act, 1883, and read over to or by and signed by the debtor as described by that section as amended by the Bankruptcy Act, 1890, sect. 2 (1) (53 & 54 Vict. c. 71). The Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), by s. 27 (2) repeals sect. 85 of the Larceny Act (24 & 25 Vict. c. 96), and prohibits the admittance of even a properly authenticated statement in proceedings in respect of any of the misdemeanours referred to in that section. The inference to be drawn from this provision is that it was intended to restore to the debtor that protection which he enjoyed at common law, but of which, as it appeared from the decision in *Reg. v. Scott*, he had been deprived by the Bankruptcy Act of 1849.

Sir Robert B. Finlay (Solicitor-General) (*H. Sutton* and *G. Banks* with him) for the Crown.—This case found as a fact that no incomplete statement was admitted in evidence against the prisoner. Each answer made by the prisoner upon his examination in bankruptcy was a statement complete in itself, and he might have qualified any statement by another statement. At the most, incompleteness could but affect the weight to be attached to the evidence, and that an answer might tend to incriminate the debtor was no reason for permitting him to refuse to answer a question which might properly be put to him in his examination under the Bankruptcy Act of 1849: (*Ex parte Cossens*, Buck's Bk. Cas. 531). The Bank-

ruptcy Act of 1849 contained no express provision, as does the Act of 1883, that the notes of the examination of a debtor shall be admissible; yet it was decided in the case of *Reg. v. Scott* (*ubi sup.*), a case which is binding on the Court, that an examination taken under that Act was admissible as evidence against the debtor. The provision that the notes taken in accordance with sect. 17 of the Bankruptcy Act of 1883 was only a provision as to the convenience of proof. If the conditions of the section were complied with, the notes themselves would be evidence, but where they have not been read over to, or by, and signed by the debtor, other evidence as to the statements made by the debtor is necessary. Anything that a prisoner says is evidence against him, unless it is excluded by a statutory enactment. In *Rex v. Christopher Taylor* (16 State Trials, p. 214) it was held that a statement made by a person upon his examination by the Privy Council was evidence against him, as also was a voluntary confession reduced to writing, but not signed by the prisoner: (*Rex v. Lamb*, 2 Leech, 625). In the case of *Reg. v. Skeen* (Bell, C. C. 97; 28 L. J. 91, M. C.) the Court was divided as to the admissibility of the examination in bankruptcy of a prisoner, but in that case the prisoner was indicted for an offence created by 5 & 6 Vict. c. 39, sect. 6 of which statute provided that a person should not be convicted by any evidence in respect of an act done by him if he should, previously to his being indicted for such offence, have disclosed the same in any examination or deposition before any commissioner of bankruptcy; and the question for the consideration of the Court was whether the prisoner had made a disclosure previously to being indicted. A similar proviso was contained in the Larceny Act (24 & 25 Vict. c. 85), and this proviso is repealed by sect. 27 of the Bankruptcy Act, 1890, which enacts that "a statement or admission made by any person in any compulsory examination or deposition before any court on the hearing of any matter in bankruptcy, shall not be admissible as evidence against that person in any proceeding in respect of any of the misdemeanours referred to in the said sect. 85." If the contention on behalf of the prisoner was right, that enactment was unnecessary, for a debtor would be protected by the common law.

*C. Mellor* in reply.

LORD RUSSELL, C.J. delivered a written judgment as follows:—The defendant was charged with certain misdemeanours under the Debtors Act, 1869. On the 20th day of May, 1895, he had been duly adjudicated bankrupt, and under the Bankruptcy Act, 1883, sect. 17, he had been duly examined on oath on five different days, and on the last of those days—namely, the 19th day of November, 1895—the examination was adjourned *sine die*. During his examination a shorthand writer had taken down in shorthand the evidence of the defendant and made a transcript of it, but the transcript was not read over to or by or signed by

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the defendant. At the trial parol evidence of the shorthand writer was tendered and received of statements or admissions made by the defendant in the course of his examination of facts tending to establish the misdemeanours with which he was charged. The question is, was that parol evidence properly admitted? It was argued that it was improperly admitted—first, on the ground that the examination, having been adjourned *sine die*, was not completed, and therefore the prisoner might not have had the opportunity of making a complete statement and explanation. As to this, it is to be observed that the deputy recorder has in the case before us found as a fact that no incomplete statement was given in evidence, by which I understand him to mean that the statements of which evidence was given were not fragmentary, but were, as far as the particular facts dealt with by them, complete. This, however, is not, I apprehend, the character of the objection in fact urged. That objection I understand to be that, even if otherwise admissible, the parol evidence of the statements made was not admissible, because the examination was adjourned *sine die* and was not in that sense complete. In my judgment, whichever form the objection takes, it is one which goes only to the effect and weight of the evidence, and not to its admissibility. If the jury thought that the statements were fragmentary or incomplete it would properly affect the weight they would think it just to attribute to them, but their admissibility would not be thereby affected. The second and main objection urged is that upon the true construction of the 17th section of the Bankruptcy Act, 1883, the only evidence which can be received of the statements made by the bankrupt is the transcript taken down in writing and read over to and signed by the debtor under that Act, or read over by the debtor and signed by him under the later Act of 1890. A further objection urged was that any such transcript, even if read over and signed, would not be admissible in a criminal prosecution, and that *a fortiori* parol evidence of statements made during the examination was not admissible in such a prosecution. In support of these objections the principle *nemo tenetur seipsum accusare* was relied upon. I proceed to consider these contentions. The principle referred to has undoubtedly been regarded as an important one. Lord Eldon described it as one of the most sacred principles of the law: (*Ex parte Cossens; Re Worrell*, Buck's Bk. Cas., p. 540). But he proceeds to point out that he has always understood that proposition to admit of a qualification with respect to the jurisdiction in bankruptcy—namely, that a bankrupt cannot refuse to discover his estate and effects and particulars relating to them, though, in the course of giving information to his creditors, that information may tend to show that he has committed a criminal offence. He points out that, under the law then existing, while the commissioners would not compel a bankrupt to answer a question directly aimed at incriminating him, they would compel him to answer questions which might tend in that direction. I



am, however, relieved from the necessity of considering old authorities on this subject as express statutory provisions have taken the place of usage and judicial authority, and the latter are only useful in so far as they may throw light upon the proper principle of construction to be applied to the Acts of the Legislature. By the Bankruptcy Act, 1849, sect. 117, it was provided that the Court might summon the bankrupt before it, and, if necessary, compel his attendance by warrant, and that it should be lawful for the court to examine the bankrupt (after he had made a solemn declaration to speak the truth) touching all matters relating to his trade, dealings, or estate, or which might tend to disclose any secret grant or concealment, and to reduce his answers into writing, which examination when reduced into writing the bankrupt should sign and subscribe. The construction and effect of that section were carefully considered in the case of *Reg. v. Scott*, decided in 1856, and reported in 25 L. J., M. C. 128. In that case the answers of the bankrupt had been reduced into writing and signed by him. Questions were put to the bankrupt and answered by him, under threat of committal, in relation to his trade books, and these are stated in the case framed by Willes, J., for the opinion of the Court for Crown Cases Reserved, to have influenced the jury against the prisoner, and tended to cause his conviction. It was objected in that case that the statements, being made after a declaration tantamount to an oath, they were inadmissible; secondly, that they were not voluntary; and, thirdly, were made after threats from a person in authority; but the Court (Coleridge, J. dissenting) held that the signed statement was admissible. As to the first objection, the court held that, if the examination was taken under oath administered by proper authority, it is admissible. As to the objection that the statements were not voluntary, it was held that such an objection does not apply to a lawful examination in the course of a judicial proceeding, and, as to the alleged threats, two or three were no more than a warning to the defendant of the consequences which in point of law would follow from his refusing to give a true answer to the questions put to him. Lastly, as to the arguments based upon the principle *nemo tenetur seipsum accusare*, the Court held that the statute of 1849 had in the case in question taken away this privilege, by enacting that he must answer touching all matters relating to his trade or estate without any qualification. It is to be observed that in this case there was no express provision that the answers of the bankrupt should be admissible in evidence against him. In my judgment the principles enunciated in this case (with the decision in which I entirely agree) practically determine the present case, but as the precise question here reserved turns upon a later statute, it is necessary to examine that later statute. The examination in question took place under the Bankruptcy Act of 1883, sect. 17 of which provides that the Court may appoint a day for the examination of the debtor, at which he shall be examined as

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to his conduct, dealings, and property. It provides that the Court may adjourn the examination from time to time, that the official receiver may take part in the examination and, if authorised, may employ a solicitor with or without counsel; a trustee, if appointed before the examination concludes, may take part in it; the Court may put such questions to the debtor as it may think expedient, and lastly it is provided in these terms, sub-sect. 8: "The debtor shall be examined upon oath, and it shall be his duty to answer all such questions as the court may put or allow to be put to him. Such notes of the examination as the court thinks proper shall be taken down in writing, and shall be read over to and signed by the debtor, and may thereafter be used in evidence against him. They shall also be open to the inspection of any creditor at all reasonable times." Finally, by sub-sect. 9, when the Court is of opinion that the affairs of the debtor have been sufficiently investigated, it shall declare the examination concluded. As to the subjects upon which the debtor may be examined, it is to be observed that his "conduct" is included, a word not found in the 117th section of the Act of 1849. In my judgment this makes no difference, and I think that under the former Act the matter intended to be covered, as I conceive by that word in the latter section, could have been made the subject of examination under the former Act. It seems to me that "conduct" there relates to the matters referred to in sect. 28 dealing with the considerations which the Court ought to weigh as to granting or refusing an order of discharge, or as to the terms on which such order may be granted. To return to the construction of this section, it will be seen that the examination, if authenticated as provided in sub-sect. 8, may thereafter be used in evidence against the bankrupt without any qualification pointing to its exclusion in the case of criminal proceedings. Indeed, seeing that a bankrupt is not likely to be the subject of civil proceedings, it is more difficult to suppose that the exclusion of criminal proceedings could have been intended. I think, therefore, it must be taken as clear, conformably with the decision in *Reg. v. Scott*, that, if duly authenticated as provided by sub-sect. 8, the examination could properly be used against the defendant on a criminal charge. It is equally clear that, not being regularly authenticated, it cannot be put in evidence. If it could, it would become in itself, without further proof than compliance with the formal provisions of the Act, substantive evidence, but the point that we have here to decide is—Is such authenticated examination the sole evidence which can be given of statements or admissions of the defendant during his examination? I am clearly of opinion that it is not. In the first place, the statute does not say that it shall be the only evidence of his statements. In the next place, his statements have been made on an occasion when he was under lawful examination on oath, and therefore are not to be regarded as induced by threats or promises, or under undue

influence, circumstances which would properly cause them to be regarded as not being voluntary, and therefore inadmissible. I regard the statutory provision, therefore, as one intended to provide only for the most authentic way of presenting to the Court the statements made, but not at all as intended to exclude all other modes of giving evidence of statements made by the defendant in the course of his examination. We cannot give effect to the objection made without construing the statute as if it had said, which it does not, that the authenticated examination shall alone be received as evidence of the statements so made. If then, this view is correct, is there any rule of law by which his evidence should be excluded? I know of none. I take the general rule to be (apart from any express statutory exceptions) that any statement made by a party relevant to the matter in hand may be given in evidence against him in any civil case and also in any criminal case, except where such statement is made upon oath improperly administered, or where such statement is not voluntary within the principle to which I have already referred. I think this view is strengthened by the provisions in the Bankruptcy Act, 1890, which by sect. 27 (1) repeals so much of sect. 85 of 24 & 25 Vict. c. 96 as provides that no person shall be liable to be convicted of any of the misdemeanours mentioned in sects. 75 and 84 of that Act (being frauds by agents, bankers, or factors), if he shall have first disclosed the same in any compulsory examination or deposition before any Court on the hearing of any matter in bankruptcy or insolvency, and which further provides, in sub-sect. 2, that a statement or admission made by any person in any compulsory examination in bankruptcy shall not be admissible as evidence against that person in any proceeding in respect of the misdemeanours referred to in sect. 85. It is noticeable that sub-sect. 2 does not speak of a signed statement or examination, but of a statement or admission, the latter a word which can hardly be taken to be descriptive of a formal statement read over to or by and signed by the bankrupt or other person. But more—while it expressly negatives the admissibility of a statement or admission made in any compulsory examination or deposition before any court on the hearing of any matter in bankruptcy where the proceedings are in respect of any of the misdemeanours referred to in sect. 85 of the Larceny Act, 1861, it is wholly silent as to any proceedings in respect of misdemeanours (such as are here in question) outside the Act of 1861. It has been objected that the broad principle which I have expressed would recognise the admissibility of the evidence of any person as well as the shorthand writer as to the statements or admissions made by a bankrupt during his examination. This is quite true; it would. But this seems to me to be only an objection to the weight and reliability of the evidence, not to its admissibility, and I have no fear that, in the application in practice of the principle enunciated, both judges and juries may

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not well be trusted to discriminate between evidence of statements accurately recorded and formally authenticated and evidence of statements which do not fall within that category. In the result, therefore, the conviction will be affirmed.

*Conviction affirmed.*

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in bankruptcy  
examination  
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Solicitor for the prosecution, *Solicitor to the Treasury*.  
Solicitor for the prisoner, *E. F. S. Pearson, Leeds*.

### QUEEN'S BENCH DIVISION.

*Tuesday, May 19, 1896.*

(Before Lord RUSSELL, C.J. and WILLS, J.)

FOSTER (app.) v. FYFE AND ANOTHER (resps.). (a)

*Mines—Inspector of mines—Authorising agent to lay information  
—Metalliferous Mines Regulation Act, 1872 (35 & 36 Vict.  
c. 77), ss. 33 and 35.*

*An inspector of mines under the Metalliferous Mines Regulation Act, 1872, having determined to prosecute for an offence under the Act which can be prosecuted before a Court of summary jurisdiction, is entitled to authorise an agent to lay the information in his name.*

*M., an inspector of police in the county of M., laid an information against the respondents for an offence under sect. 13 of the Metalliferous Mines Regulation Act, 1872 (35 & 36 Vict. c. 77). In such information he described himself as the duly authorised agent on that behalf for F., an inspector of mines under the Act, in whose name the information was laid. At the hearing F. appeared to support the information, but the respondents raised the objection that the information was bad on the ground that under sect. 25 of the Act it should be laid by the inspector in person. The magistrates adopted this view, and declined to hear the case. At F.'s request a case was stated.*

*Held, that once the inspector himself had decided that the prosecution should be instituted, he had the same right to lay his information by an agent as any other prosecutor under sect. 10*

(a) Reported by J. A. STRAHAN, Esq., Barrister-at-Law.

*of the Summary Jurisdiction Act, 1848, which is incorporated with the Metalliferous Mines Regulation Act, 1872, by sect. 33.*

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CASE stated by the justices of the county of Merioneth.

In December, 1895, one Morgan appeared before a justice of the county and laid an information against the respondents, which commenced in these words :

The information of Clement Le Neve Foster, of, &c., Her Majesty's Inspector of Metalliferous Mines, by David Thomas Morgan, of, &c, inspector of police, his duly authorised agent in that behalf, who upon oath states that, &c.

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The information went on to charge the respondents with having unlawfully failed to cause the top of the shaft of an abandoned mine of which they were owners to be and to be kept securely fenced for the prevention of accidents, contrary to the provisions of sect. 14 of the Metalliferous Mines Regulation Act, 1872 (35 & 36 Vict. c. 77).

At the hearing of the information before the justices in petty session Mr. Foster appeared with his solicitor in support of the charge set out in the information. The respondents, however, took the objection that, the offence here being one which could be prosecuted before a Court of summary jurisdiction under sect. 35 of the Act, the information could not be laid by anyone except the inspector himself, save with the consent in writing of a Secretary of State. Here it was admitted that there was no such consent, and the information, being on the face of it laid not by the inspector but by an agent of the inspector, it was bad.

Sect. 35 of the Metalliferous Mines Regulation Act, 1872, is as follows :

No prosecution shall be instituted against the owner or agent of a mine to which this Act applies for any offence under this Act which can be prosecuted before a court of summary jurisdiction, except by an inspector or with the consent in writing of a Secretary of State; and in the case of any offence of which the owner or agent of a mine is not guilty, if he proves that he had taken all reasonable means to prevent the commission thereof, an inspector shall not institute any prosecution against such owner or agent, if satisfied that he had taken such reasonable means as aforesaid.

Sect. 33. All offences and penalties under this Act, and all money and costs by this Act directed to be recovered as penalties, may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts before a court of summary jurisdiction.

The Summary Jurisdiction Act, 1848 (Jervis's Act, 11 & 12 Vict. c. 43), enacts :

Sect. 10. Every such complaint upon which a justice or justices of the peace is or are or shall be authorised by law to make an order, and every information for any offence or act punishable upon summary conviction . . . may be laid or made by the complainant or informant in person, or by his counsel or attorney, or other person authorised in that behalf.

The justices being of opinion that the information was not properly laid, refused to hear it, and Mr. Foster, being dissatisfied with this decision in point of law, the justices at his request stated a case for the opinion of the High Court.

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*Henry Sutton* for the appellant.—The short point was whether an inspector of mines can, under the Metalliferous Mines Regulation Act, 1872, lay an information by an agent? This depended on sects. 33 & 35 of the Act and sect. 10 of Jervis's Act (11 & 12 Vict. c. 43). It was admitted that sect. 35 precludes ordinary members of the public from initiating prosecutions under the Act save with the written consent of the Home Secretary; but it was submitted that, when the prosecutor is an inspector, there is nothing in that section to take away from him the right given to every prosecutor by sect. 10 of Jervis's Act, to lay his information by an agent. If the justices' decision was right an inspector under the Act would be unable to lay an information even by his solicitor. All the Act requires is that the inspector shall determine when a prosecution shall be initiated, and once he has determined to prosecute he has the same rights under sect. 10 of Jervis's Act as other prosecutors.

*Macaskie* for the respondents.—The first point was that there was no evidence here that in fact the inspector did authorise the prosecution. The subsequent appearance of the inspector in support of the charge was quite consistent with the prosecution having been instituted by Morgan, and subsequently ratified by the appellant. The objection to informations being laid by agents was that it would be impossible to prevent subsequent ratification of an unauthorised prosecution. Parliament had insisted on a written consent being given by the Secretary of State in authorising prosecutions in order to prevent such subsequent ratification. If it had intended that the agents of inspectors might lay informations, it would have insisted on the authority to lay them being written too. The second point was, that Parliament, if it had intended informations to be laid by agents, would have said so. The third point was, that, under sect. 16 of Jervis's Act, in the case of an unsuccessful prosecution costs may be given against the prosecutor. If these informations by agents were permitted the inspector, in case the prosecution failed, might repudiate the agent, and so the defendant might be unable to recover his costs. [Lord RUSSELL, C.J.—All these difficulties as to costs—assuming they are difficulties—arise equally in all cases of information by agents under sect. 10 of Jervis's Act.] In every case of agency the court insists on the authority of the agent being strictly proved: (*Anderson v. Hamlin*, 63 L. T. Rep. 168; 25 Q. B. Div. 221; *Kyle v. Barber*, 58 L. T. Rep. 229).

Lord RUSSELL, C.J.—This case must be remitted to the justices with an intimation that, in the judgment of this Court, the view they took of the construction of sect. 35 of the Metalliferous Mines Regulation Act, 1872, was wrong. The information was laid in the name of Mr. Le Neve Foster—an inspector of mines under the Act. The person laying it was Morgan, who is stated in the information to be the duly authorised agent for that purpose of the inspector. The charge against the respondents was, that they, being the owners of a metalliferous mine, the



working whereof was discontinued, did on the day named in the information, unlawfully fail to cause the top of a shaft to be and to be kept securely fenced, contrary to sect. 13 of the Act. One point only was taken at the hearing, and that was, that under sect. 35 the information must be laid by the inspector himself and by no one else—that he could not authorise anyone to lay the information in his, the inspector's, name. That was the point, and the only point, discussed before the magistrate, and so we cannot go into the question whether there was or was not sufficient evidence that Morgan was duly authorised by the inspector, though, if it were necessary to express an opinion, I believe there was ample evidence, and that altogether apart from any ratification. That point, however, has not been submitted to us, and I will not deal with it, but with the real contention before the magistrates, that the information must be laid by the inspector himself, and that he could not authorise an agent to lay it for him. On this contention the magistrates decided in the respondent's favour, and the question is, was their decision right? In my opinion their decision was right. I agree with the contention of the respondents' counsel that the scheme of the Act is to prevent any save a limited class of persons from initiating prosecutions under the Act. I agree also that the scheme of this Act is, that the inspector shall use his own judgment as to whether prosecutions should or should not be initiated. But I see nothing in the scheme of sect. 35 of the Act to exclude the application of sect. 10 of Jervis's Act, which is incorporated in this Act. I think here that this was a prosecution instituted by an inspector of mines, because the inspector did authorise Morgan to institute the proceedings in his name. That disposes of the case. But counsel has suggested that difficulties might arise as to costs in case the information is laid by an agent, as, if the prosecution failed, the defendant might find it hard to prove that the agent was authorised to prosecute should the authority to do so be repudiated by the inspector. As I pointed out during the argument, the same kind of difficulties might arise in other cases of informations laid by an agent under sect. 10 of Jervis's Act, and, as my brother Wills pointed out, no such difficulties have in fact arisen. Two cases have been cited by counsel, which I will shortly refer to. As to the first—*Anderson v. Hamlin*—it was necessary to prove an authority to prosecute, and the point being distinctly raised, it was held by the Court that there was not sufficient evidence to prove it. As to *Kyle v. Barber*, I need merely say it has no application to the present case. For these reasons I am of opinion that our judgment must be for the appellant on the point raised by the case, which must therefore be remitted to the magistrates.

WILLS, J.—I am of the same opinion. Sect. 35 of the Metalliferous Mines Regulation Act, 1872, gives a very important protection to mine-owners. It provides that the mental act of deciding to institute proceedings must be the act of the inspector

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himself, and that he cannot delegate it to an agent. No question of ratification by him of a prosecution can arise unless the mental act of instituting it was not his, and as to this, when the information is not laid by him, it is the duty of the magistrates to satisfy themselves whether he did decide to institute the prosecution, and whether he did authorise the person who laid the information to lay it. But assuming it was the inspector who instituted the prosecution, I can see no reason at all why sect. 15 of Jervis's Act, which is incorporated in the Metalliferous Mines Regulation Act, 1872, by sect. 33, should not apply, and why the inspector cannot have the same facilities as to laying informations as other prosecutors. Obviously it would be extremely inconvenient if the inspector had in every case to go to petty sessions to lay an information in person. It would take up valuable time, and I see no reason for holding that sect. 35 imposes any such obligation upon him.

*Case remitted to magistrates*

Solicitor for the appellant, *Solicitor to the Treasury.*

Solicitors for the respondents, *James Neale*, agent for *Lloyd, George*, and *Lloyd, Portmadoc.*

## QUEEN'S BENCH DIVISION.

*Friday, May 15, 1896.*

(Before Lord RUSSELL, C.J. and WILLS, J.)

BORROW (app.) v. HOWLAND (resp.). (a)

*Obstruction of sanitary authority—Removal of house refuse—Refusal to allow scavengers to enter house for removal of refuse—“Wilful obstruction”—Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), ss. 16, 30, 31, 116.*

*Under the provisions of sect. 16 of the Public Health (London) Act, 1891, the London County Council made a bye-law that the sanitary authority should remove, at least once in every week the house refuse on premises within their district, but they had made no bye-law as to the duties of occupiers of houses for the purpose of facilitating the removal of such refuse, and an authority under this bye-law appointed a certain day in each week for the removal of such refuse, and gave due notice of the same. The respon-*

(a) Reported by W. W. ORR, Esq., Barrister-at-Law.

*dent objected to the weekly removal of refuse as being an unnecessary annoyance, and on a certain day he refused to allow the scavengers of the authority to enter his house for the purpose of removing the refuse :*

*Held, that the respondent, in so refusing, was guilty of "wilfully obstructing" the officers of the authority in the execution of the Act within the meaning of sect. 116 of the Act, and was liable to the penalty imposed by that section.*

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**C**ASE stated by a metropolitan police magistrate sitting at the Clerkenwell Police-court.

A complaint was preferred by the appellant, a foreman scavenger in the employment of the vestry of the parish of St. Mary, Islington, under the Public Health (London) Act, 1891, against the respondent, for that on the 31st day of January, 1896, at his house, in the said parish, he wilfully obstructed the appellant and others, being officers of the vestry, which is the sanitary authority of the parish, or being persons employed in the execution of the Public Health (London) Act, 1891, contrary to the provisions of the Act.

The magistrate dismissed the complaint and stated this case.

The following facts were proved and were not disputed by the respondent.

Under the provisions of sect. 16 of the Public Health (London) Act, 1891, the London County Council had made certain bye-laws as to the removal and disposal of house refuse, and by No. 7 of such bye-laws it was provided.

The sanitary authority shall cause to be removed not less frequently than once in every week the house refuse produced on all premises within their district.

The county council had not made any bye-laws under such section as to the duties of the occupier of any premises in connection with house refuse so as to facilitate the removal of it by the scavengers of the sanitary authority. The vestry is the sanitary authority, and the premises were occupied by the respondent as a dwelling-house.

In compliance with the bye-law the vestry, as the sanitary authority, made arrangements for a weekly collection of house refuse within their parish, commencing on the 17th day of June, 1895, and a notice was served by the vestry upon the respondent, that, to meet the requirements of the county council, they had decided to institute a weekly collection of house refuse, and that the scavengers appointed by the vestry would call at his premises on Friday in each week to remove the house refuse.

The respondent objected to the weekly removal of his house refuse as an unnecessary annoyance, and he refused to allow the appellant and his assistants to remove the house refuse from his premises on the proper days for the weekly removal, and, in consequence of such refusals, written notice was sent to him on behalf of the vestry.

On Friday, the 31st day of January, 1896, the appellant with

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two other men, all three being persons duly employed by the vestry in the execution of the Act so far as regards the removal of house refuse, attended at the respondent's premises and asked to be allowed to remove the house refuse, but the respondent repeatedly refused to allow the dustman to enter his premises, and refused to allow and did not permit, the removal of the house refuse on his premises by the scavengers, who did not attempt to remove the same by force.

There were about one and a quarter baskets of house refuse (consisting of ashes) on the respondent's premises at the time, but it was not suggested that such refuse caused any nuisance.

On the part of the appellant it was contended that, inasmuch as by sect. 30 of the Public Health (London) Act, 1891, it is enacted that "it shall be the duty of every sanitary authority to secure the due removal at proper periods of house refuse from premises," and that by sect. 31 of the same Act, it is enacted that "every sanitary authority shall employ a sufficient number of scavengers . . . for the execution of the duties of the sanitary authority under this Act in respect to (*inter alia*) the collection and removal of . . . house refuse;" and by sect. 16 of the same Act it is enacted that "it shall be the duty of every sanitary authority to observe and enforce any bye-laws made under this section;" and, inasmuch as the above-mentioned bye-law directs a weekly removal of house refuse, the conduct of the respondent in refusing to allow and not permitting the removal of the house refuse amounted to a wilful obstruction under sect. 116 of the Act, which imposed a penalty not exceeding 5*l.* upon any person who "wilfully obstructs any member or officer of a sanitary authority or any person duly employed in the execution of this Act;" and that, if such refusal were not covered by such section, there is no provision under which an occupier could be compelled to allow his house refuse to be removed unless and until it became a nuisance as defined by the Act, when he could be proceeded against under the sections of the Act relating to abatement of nuisances.

The respondent appeared in person before the magistrate, and merely submitted that it was an unnecessary annoyance to him to have his dust removed weekly.

The magistrate was of opinion that the mere refusal to permit house refuse to be taken away was not an offence under the Public Health (London) Act, 1891, and that the refusal of the respondent did not amount to a wilful obstruction of an officer of a sanitary authority or of a person duly employed in the execution of the Act and he dismissed the summons.

The learned magistrate stated his reasons as follows: Sect. 123 of the Metropolis Management Act, 1855, which is repealed by the Public Health (London) Act 1891, is not re-enacted by the last-mentioned Act. Such section is as follows: "Any occupier of any house or land or other person who refuses or does not permit any soil, dirt, ashes, or filth to be taken away

by the scavengers appointed by the vestry . . . or who obstructs the said scavengers in the performance of their duty shall . . . forfeit and pay a sum of 5*l.*” By sect. 142 of the Public Health Act, 1875, it is enacted that the Acts specified in the 4th schedule are thereby repealed to the extent specified in the third column to that schedule as from the date in that schedule mentioned. By such schedule sect. 126 was repealed as from the coming into operation of any bye-law made for the like object; but by sub-sect. 4 of sect. 142 of the Public Health (London) Act, 1891, it is provided that any enactment expressed in the 4th schedule to that Act to be repealed as from the coming into operation of any bye-law made for the like object shall, although no such bye-law is made, be repealed on the expiration of twelve months next after the commencement of that Act, and sect. 126 of the Act of 1855 was therefore repealed on the 1st day of January 1893.

The magistrate was of opinion that the provisions of the Public Health (London) Act, 1891, evidently contemplated that the county council would make bye-laws as to the duties of the occupiers of any premises in connection with house refuse, and in the absence of such bye-laws the respondent ought not to be convicted of a different offence.

The question for the opinion of the Court was, whether the magistrate came to a correct decision in point of Law in dismissing the complaint as not coming within the terms of sect. 116.

*Macmorran*, Q.C., for the appellant, was stopped.

The respondent appeared in person.

LORD RUSSELL, C.J.—I am of opinion that the magistrate was clearly wrong in the decision to which he came in this case. The difficulty which he appears to have felt arose from the fact that there was in the Metropolis Management Act, 1855, a previous dealing in express terms with the offence which is alleged to have occurred here; but the London County Council in making their bye-laws did not think it right to make a bye-law directed in express terms to the same object as sect. 126 of the Act of 1855. I have no doubt the County Council had not done so, because they considered that the law as it stood was sufficient for the purpose. [His Lordship having stated the facts and read the sections above set out proceeded:] It is perfectly obvious that, if this work of the removal of house refuse is to be done with regularity, economy, and efficiency, it must be done on some system, and it would be impossible to carry out the work satisfactorily if each particular person were to be at liberty to say: “I have not a sufficient quantity of refuse in my house to-day to justify you in coming into my house to remove it but if you will come later I shall have some which you may remove.” It would be impossible to carry out the work if this were permitted, and accordingly, after information of the respondent’s refusal had been received, a very courteous letter of remonstrance was

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sent to him, pointing out that he ought to allow the dust to be removed. Then after that letter came the refusal now complained of. My brother Wills seems to think that the magistrate must have been under the impression that because the scavengers did not attempt to force their way into the house, and their entrance was not resisted by violence, no offence had been committed. If the magistrate took the view that unless the performance of such a duty as this is resisted by physical force no offence is committed he was very wrong. But I do not myself take that view of the ground upon which he based his decision. My opinion is, that the magistrate rather took the view that because there was no express penalty provided for by a bye-law such as was provided for by the Metropolis Management Act, 1855, no penalty could be enforced. I think he was wrong in that view. The duty of carrying out the Public Health Act of 1891 is clearly cast upon the local authority, and sect. 116 of that Act expressly provides that any person who wilfully obstructs any officer of a sanitary authority in the execution of his duty shall be liable to this fine of 5*l*. The question then is, do the facts here show that the respondent wilfully obstructed the officers of the authority in the execution of a duty under the Act? There is no doubt that the respondent took an utterly unreasonable objection to the performance of their duty by the persons employed by the local authority. Because his house refuse was not in his opinion so much as his neighbours, and did not constitute a nuisance, he said he ought not to be subject to what he called the annoyance of having the dustmen coming into his house, and he refused to admit them to remove the refuse. It is clear, therefore, that what he did was done wilfully. Did it amount to obstruction? Most undoubtedly it did; because the scavengers cannot perform their duties unless they have access to the receptacles containing the house refuse, and if a man stands in the doorway of his house and refuses to allow the scavengers to enter, it is most certainly an obstruction. I come, therefore, to the conclusion that the magistrate was clearly wrong; that there was wilful obstruction, and that the case must be remitted to him with that intimation of the opinion of the Court.

WILLS, J.—I am of the same opinion. My only difficulty is to understand the ground upon which the magistrate has decided the case. The magistrate says that he considers the mere refusal to allow the refuse to be taken away does not amount to wilful obstruction, and was not an offence within the Public Health Act of 1891, not being wilful obstruction of a person employed by the sanitary authority, or of an officer of that authority, in the execution of his duty. Certainly I was inclined to look upon that decision as meaning that something more than a mere refusal, something in the nature of force, was necessary to constitute the offence of obstruction, which would of course be wholly wrong. If the magistrate did not mean that, I agree entirely with the Lord Chief Justice. The respon-

dent has brought himself within the section of the Act by his refusal to allow these persons to enter his house for the purpose of removing the refuse, and by such refusal he wilfully obstructed them in the execution of their duty.

*Appeal allowed. Case remitted to magistrate.*

Solicitor for the appellant, *A. M. Bramall.*

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## WORCESTERSHIRE WINTER ASSIZES.

*Monday, February 10, 1896.*

(Before GRANTHAM, J.)

REG. v. WALDRON AND OTHERS. (a)

*Costs of prosecution upon conviction for a common assault—Power of Court to order payment of—24 & 25 Vict. c. 100, ss. 47, 77.*

*The Court has power to make an order under 24 & 25 Vict. c. 100, s. 77, for the payment of the costs of the prosecution, in cases of indictment for common assault as well as in cases of indictment for assault occasioning actual bodily harm.*

THE prisoners were tried upon an indictment containing counts for (1) being on land armed by night in pursuit of game; (2) assault upon a gamekeeper under 9 Geo. 4, c. 69; and (3) common assault.

The case was opened to the jury and was conducted throughout on the footing that the gist of the offence against the prisoners was the assault.

The prisoners were convicted upon the third count of the indictment for the common assault.

Upon application to the Court to make an order for payment of the costs of the prosecution, the officer of the Court objected that the Court had no power to make such an order, pointing out that sect. 3 of 14 & 15 Vict. c. 55, which gave power to the Court to allow costs upon indictments for common assault had been repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

*Richard Harington* for the prosecution, *contra.*—The Court has



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power to make the order. It is true that sect. 3 of 14 & 15 Vict. c. 55, has been repealed, but reference to the preamble of the repealing Act shows that the repealed section had "become unnecessary." It had become unnecessary by reason of the enactment of the subsequent Act, 24 & 25 Vict. c. 100, by sect. 77 of which Act the costs of the prosecution in misdemeanours under that Act may be allowed in the same manner as in cases of felony, and assaults occasioning actual bodily harm and common assaults are dealt with in one and the same section of that Act (sect. 47). It is admitted that the Court can make an order for payment of costs of the prosecution in cases of conviction upon an indictment for occasioning actual bodily harm, and there is therefore the same power in cases of conviction upon an indictment for common assault.

GRANTHAM, J. held that the Court had power under 24 & 25 Vict. c. 100, s. 77 to make the order asked for.

*Order made for the costs of the prosecution to be allowed.*

## NORTHERN CIRCUIT.

### MANCHESTER SUMMER ASSIZES.

*Tuesday, July 14, 1896.*

(Before J. S. DUGDALE, Q.C., Special Commissioner.)

REG. v. HIRST. (a)

*Evidence — Admissibility of confession—Statement of fellow prisoner read and acknowledged by her in prisoner's presence, and prisoner's statement thereupon.*

*Where one of two prisoners in custody on a charge against them jointly has voluntarily made and signed a statement implicating the other, and such statement is read over to the prisoner implicated, and the latter, after being cautioned, makes a confession which is taken down in writing, and signs it when so written, the statement of the one prisoner and the admission of the other may be given in evidence on the trial of the latter.*

A BILL was preferred against Joseph Hirst and Martha Ann Goddard jointly for murder. The grand jury found a true

(a) Reported by HERBERT STEPHEN, Esq., Barrister-at-Law.

bill against Hirst, and no true bill against Goddard. They also presented an indictment which charged that Hirst was guilty of murder, and Goddard accessory after the fact. Goddard was acquitted on the latter indictment, the prosecution offering no evidence, and expressing the intention of calling her as a witness against Hirst.

It was proved in evidence that Goddard, after her arrest, offered to make a statement, and after being cautioned that what she said would be taken down in writing and might be used against her, made a statement which was taken down and signed by her, incriminating Hirst. Hirst having been charged and cautioned in the same manner as Goddard, Goddard's written statement was read to him in her presence. He asked her whether she had made it of her free will, and she said she had, and Hirst thereupon made a confession which was taken down in writing and signed by him. When it was proposed to prove Hirst's confession,

*Cottingham*, for the prisoner, objected that to read such a statement to a prisoner in custody was virtually putting a question to him, and that what he said on hearing it was equivalent to an answer elicited by a question, and that the police had no right to question a prisoner in custody. He relied upon *Reg. v. Gavin* (15 Cox C. C. 656), *Reg. v. Male and Cooper* (17 Cox C. C. 689), *Reg. v. Morgan* (59 J. P. 827).

Sir *J. F. Leese*, Q.C. (*Byrne* with him), for the prosecution, urged that the confession and Goddard's statement which had been read to the prisoner before he made the confession were admissible.

*DUGDALE*, Q.C. (Special Commissioner), after conferring with *Cave*, J., held that Hirst's confession, having been made after he was cautioned, and having, when written down, been read and signed by him, was voluntary, and that evidence of it was admissible.

*Verdict—Guilty.*

Solicitor for the prosecution, *The Town Clerk of Manchester.*

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Evidence—  
Confession—  
Admissibility  
—Statement  
of prisoner in  
answer to  
fellow  
prisoner's  
statement.

## QUEEN'S BENCH DIVISION.

*Monday, May 18, 1896.*

(Before GRANTHAM and COLLINS, JJ.)

KILLICK (app.) v. GRAHAM (resp.); LINTERN (app.) v. BURCHELL (resp.). (a)

*Inland Revenue—Excise licence—Secretary to “watch club”—Soliciting orders for watches—Liability to penalty—“Bonâ fide traveller”—Revenue Act, 1867 (30 & 31 Vic. c. 90), ss. 1, 8, 17.*

*The respondents formed and were secretaries of two “watch clubs,” the proprietors of which were in one case a watchmaker in London, and in the other case a licensed dealer in plate in London. The respondents induced persons to join these clubs, and the members paid a weekly subscription to the respondents, and at certain intervals a ballot was held, and the successful member became entitled to a silver watch. The respondents did not keep watches in stock, but they communicated the order to the principals in London, and the watch was sent to the member entitled to it. The respondents received a commission on each transaction, and all the transactions were carried on in the places where the respondents resided.*

*Held, that the respondents came within the prohibition of sect. 17 of the Revenue Act, 1867, as “persons soliciting, taking, or receiving orders” for excisable articles without having a proper licence, and that they did not come within the exemption in that section as “bonâ fide travellers.”*

KILLICK (app.) v. GRAHAM (resp.).

CASE stated by justices of the peace for the borough of Bedford.

At the petty sessions for the borough of Bedford, held on the 9th day of December, 1895, an information was preferred by the appellant, an officer of Inland Revenue, against the respondent, stating that the respondent, in July, 1895, in the town of Bedford, did deal in plate without having in force a proper licence as by the statute was required. The justices dismissed the information.

The facts were as follows :

The penalty sought to be recovered was the penalty of

(a) Reported by W. W. ORR, Esq., Barrister-at-Law.

50*l.* imposed by sect. 3 of the Revenue Act, 1867 (30 & 31 Vict. c. 90).

The respondent, a clerk in the post-office at Bedford, was secretary to the City of London Watch Club Company, of which Mr. Henry Peck was the proprietor, and Mr. Peck was a watchmaker in London. One Gaunt, a telegraph messenger, was a member of the club, and had a watch from the respondent under the following circumstances: Gaunt received a card from the respondent when he entered the club on the 2nd day of February and paid the first subscription. He was accepted as a member on that day, and he paid the subscriptions marked on the card one shilling each time, and in consequence of having paid subscriptions he received a watch from the respondent to whom he paid his subscriptions. The respondent asked Gaunt what he should want, and the latter said a silver watch, which he received before he completed payment. Gaunt said he had paid about five subscriptions since he had received the watch. The members had to ballot every month; Gaunt was not successful at the first or second ballot, but was at a later one. The entries of subscriptions were signed by the respondent, and when Gaunt paid his last subscription the words, "Settled the 31st day of August, 1895, E. F. G. (the respondent) for H. Peck," were written across the card, and about a week after Gaunt was successful at the ballot he received the watch.

Gaunt knew that the respondent was not a watchmaker or dealer in watches, but the respondents simply received the subscriptions on behalf of Peck. Gaunt would, when entitled under the ballot, receive the watch or other article from Peck, and he was entitled to receive any article he liked, such as a microscope, or a bag for clothes, and nothing was said about a watch until after his successful draw. The respondent did not ask Gaunt to order a watch or anything. The respondent kept nothing in stock, but Gaunt's wish would simply be communicated from respondent to Peck, and the respondent told Gaunt that he would get the watch for him, and when asking Gaunt to join the club he stated that he could have what he liked.

The respondent stated to the appellant that he acted as secretary to the club and as agent to Peck for the supply of watches, microscopes, bags, and other articles, and that he received a small commission from Peck for any article supplied through him.

On the part of the respondent it was claimed that he, being secretary to the club, was not within sect. 17 of 30 & 31 Vict. c. 90, and the justices dismissed the information upon the ground that the respondent as secretary of the club was not within sect. 17 of 30 & 31 Vict. c. 90.

The question for the Court was, whether the respondent, being secretary to the club, was a person requiring a licence as a dealer in plate.

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—  
1896.

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— *Soliciting*  
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*silver—*  
*Secretary to*  
*watch club—*  
*Bond fide*  
*traveller—*  
30 & 31 Vict.  
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LINTERN (app.) v. BURCHELL (resp.).

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— *Soliciting*  
*orders for*  
*silver—*  
*Secretary to*  
*watch club—*  
*Bond fide*  
*traveller—*  
30 & 31 Vict.  
c. 90, ss. 1, 3,  
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Case stated by justices of the peace for the county of Southampton.

The respondent appeared before the justices on the 4th day of January, 1896, to answer an information exhibited by the appellant, an officer of Inland Revenue, for recovery of the penalty of 50*l.* imposed by sect. 3 of the Revenue Act, 1867, for dealing in plate, at the parish of Havant, in the county of Southampton, without having in force a proper licence.

The justices dismissed the information.

The facts were these: The respondent lived and was employed as a fellmonger at Havant. Early in 1895 he was requested by James Yabsley, of Ludgate-hill, London, a licensed dealer in plate, to form a club amongst his fellow workmen upon certain rules printed upon the card of membership, which was produced at the hearing, and is annexed to this case.

The respondent formed the club as requested, and it was agreed that Yabsley should allow him for the management and the collection of the subscriptions of the members a commission of 20 per cent. upon the amount collected by him and remitted to Yabsley. The number of members was unlimited.

In the course of carrying out the arrangement, the respondent suggested to a fellow-workman, named Cole, that he should become a member. Cole assented, and thereupon the respondent gave him a card of membership, and Cole made the first payment of 1*s.* to the respondent on the 27th day of April, 1895, and paid 1*s.* weekly to the respondent until the 18th day of November, when the last payment was made. In August a "draw" was held, and Cole was declared the successful member, and from an illustrated catalogue of articles on sale by Yabsley, which was shown to him by the respondent, he selected a silver watch at the price of 1*l.* 16*s.*, and a few days afterwards the respondent handed him a watch and a warranty purporting to come from Yabsley.

A number of other persons—from twenty to twenty-four—paid contributions of 1*s.* a week to the respondent upon the same terms and conditions as Cole, and constituted the club of which the respondent was the manager and collector.

The respondent received his commission from Yabsley, but Cole had no direct communication whatever with Yabsley, and the transactions with the respondent took place on the premises where the respondent was employed, which consisted of an inclosed yard with shed, but the "draw" took place at the respondent's house.

The watch was produced, and it was proved that the weight of the case was twenty-eight pennyweights, and that the respondent did not hold any licence to deal in plate.

On behalf of the appellant it was contended that upon the facts the respondent had sold the watch to Cole at Havant, and

that he required a licence to deal in plate to enable him to sell such watch.

For the respondent it was contended that the respondent, as secretary of the club, was not a dealer in plate, and therefore was not a person who required a licence as such.

The justices were of opinion that the respondent was not the seller of the watch within the meaning of the statute, and they accordingly dismissed the information.

The questions for the opinion of the Court were (1) Whether, upon the facts, the decision was right in point of law; (2) Whether, by reason of the transactions between himself and Cole, the respondent incurred the penalty imposed by sect. 3.

The duty upon a licence to deal in plate is imposed by sect. 1 of the Revenue Act, 1867 (30 & 31 Vict. c. 90), which, as far as is material, is as follows :

There shall be charged and paid the following excise duties on licences to deal in plate to be taken out yearly in the United Kingdom by the persons hereinafter mentioned (that is to say)—By every person who shall trade in or sell any article composed wholly or in part of gold or silver in respect of every house, shop, or other place in which his trade or business shall be carried on—Where the gold shall be above two pennyweights and under two ounces in weight, or the silver above five pennyweights and under thirty ounces in weight, the sum of 2*l.* 6*s.*

The penalty sought to be recovered is imposed by sect. 3, which provides :

Every person who shall do any act, or carry on any trade or business for which a licence to deal in plate is required by this Act, without having in force a proper licence authorising him so to do, shall for every offence forfeit the sum of fifty pounds, and in any proceeding for the recovery of such penalty it shall be sufficient to allege that the defendant did deal in plate without a proper licence in that behalf, and it shall not be necessary further or otherwise to describe the offence.

Sect. 17 provides :

If any person shall solicit, take, or receive any order for spirits, wine, or other article, for the dealing in, retailing or selling whereof an excise licence is by law required, without having in force a proper excise licence authorising him so to do, he shall forfeit the penalty imposed by law upon a person dealing in, retailing, or selling such article without having an excise licence in force authorising him so to do. Provided that nothing herein contained shall be deemed . . . to impose a penalty upon a *bond fide* traveller taking orders for goods which his employer is duly licensed to deal in or sell.

Sir *Robert Finlay* (S.-G.) and *Danckwerts* for the appellant.—The respondents who had got up these watch clubs were clearly liable and ought to have been convicted. The effect of the statute is that a person conducting any so-called club or branch falls within sect. 9 of the Customs and Inland Revenue Act, 1890 (53 Vict. c. 8), by which an excise licence to carry on any trade only authorises the licensee to carry on that trade in one set of specified premises. Whether we look at sect. 1 or sect. 17, the respondents in both cases are liable. They come within sect. 1 as having “sold or traded in silver;” and within sect. 17 as having “solicited or taken orders” for articles for the sale of which an excise licence is required. The case is one of a dealer in London who has this club got up, and whose

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manager is trading in and selling these articles in the place where the manager lives, and, although the institutions are called clubs they are merely places for selling on the spot. The respondents are clearly brought within sect. 17, and that brings the case back to sect. 3, which imposes the penalty. The point as to who is the seller, and as to the effect of a sale by a servant, was considered in the case of *Hotchin v. Hindmarsh* (65 L. T. Rep. 149; (1891) 2 Q. B. 181), where it was held that a servant of a dairy company, who had sold milk, was the seller within the Sale of Food and Drugs Act, 1875, showing that to have a sale it is not necessary that a person should sell as principal. The present is the case of a club, and in this connection I cite *Bowyer v. The Percy Supper Club Limited*, 69 L. T. Rep. 447; (1893) 2 Q. B. 154. There are two recent cases with reference to the sale of beer which throw light on the point. In *Pletts v. Campbell* (73 L. T. Rep. 344; (1895) 2 Q. B. 229) it was held that a brewer sold certain beer, the sale of which was in question, at the door of the customer and not at the licensed premises; but in *Pletts v. Beattie* (74 L. T. Rep. 148; (1896) 1 Q. B. 519) the brewer seems to have studied the law, as there was an appropriation of the beer at the brewery before the beer was sent out. These cases show that the sale of the watches here was at the places where the watches were delivered, which brings the cases within sect. 1; but in any case sect. 17 removes any difficulty there may be as to sect. 1.

*Joseph Walton*, Q.C. (*Hextall* with him) for the respondents in both cases.—The justices were right. No question arises here such as arose in these club cases. There was no sale here by the club in any sense, and there is no analogy between an ordinary club and what is here called a club. The cases cited, therefore, do not refer at all to such cases as these. Here there was no buying, no order given for anything at all. There was nothing selected, nothing ordered, and nothing sold until after the draw; so that the transaction was not a purchase of watches, and what is called a club is simply a number of persons who join together and buy watches. There are four classes of persons who require licences under sect. 1, the first being persons who trade in or sell articles of gold or silver. This case does not come within sect. 1, because the section contemplates a trading or business carried on at some place of business, and under sect. 1 these respondents commit no offence. They do not trade in or sell any watches; they do not sell at all; they merely induce people to join together and buy watches. Then sect. 17 was intended to prevent a man who has a licensed place in London sending out agents to set up and carry on business somewhere else. If such agents did so, then the case would fall within sect. 17. It cannot be contended that the respondents did that here; all that they did was to get a number of persons to buy watches. A "traveller" must be acting not on his own account, but he must be acting *bonâ fide* as the agent or representative of another, then he cannot be brought

within sect. 17: (*Stuchbery v. Spencer*, 55 L. J. 141, M. C.; J. P. 181.) Sects. 1 and 3 are confined to cases where a man carries on his business in any defined place. The Act is not satisfied with that, for it goes on in sect. 17 to say that a man shall not solicit or take orders except for a person or place duly licensed. The respondents do not solicit orders within the meaning of this section.

Sir *R. Finlay* (S.G.) in reply.

GRANTHAM, J.—In this case I have had considerable difficulty in coming to a conclusion, and my learned brother has had the same difficulty. But we have now both come to the conclusion that, whatever may be the liabilities of these two persons under the 1st and 3rd sections of the Act, we cannot get them out of the liability imposed by the 17th section. That section seems to have been intended to sweep in general cases of this kind, where people—I will not say have adopted improper precautions, but—have endeavoured to extend their business for the sale of excisable goods without paying the proper licences. Finding that people did solicit orders throughout England, and that in the course of their business they very largely did so in that way, and that they paid only a small licence for the privilege they were enjoying, the Legislature thought it necessary to prevent that and to make such persons liable when they did obtain orders for such goods in any other place. Whether the persons who obtained the orders had a residence in the place or not, the liability was to be the same as if they had been dealing with the goods in a certain house. That was the general provision of sect. 17. Then, as the Legislature knew that certain persons had legitimate travellers, and that the trade of a commercial traveller was a well-known trade in this country, they put in a proviso that the section should not apply to a *bonâ fide* traveller taking orders for goods which his employer was duly licensed to deal in, or to sell. I cannot bring these respondents within the term “*bonâ fide* travellers.” I think the term “*bonâ fide* traveller” is a term well known in trade to mean a man who does travel and go about the country soliciting orders, which are sent up to the employer. I have come to the conclusion that these respondents are not travellers, and that they do solicit, take, or receive orders for watches. Their business is to go to these men and ask them to join a club by which they may obtain a watch. I quite admit that the thing chosen may not necessarily be a watch, for they may obtain some other articles; but primarily and generally they are watches, because the club is kept up by a watchmaker, and I can only look at the bag or other articles as being introduced for the purpose of throwing people off their guard, and of preventing this Act from applying. Watchmakers do not deal in bags; and in this case these persons are described as “chronometer, watch and clock manufacturers, goldsmiths, diamond merchants,” &c. They do not deal in bags, and I can only assume that that statement was put in for the purpose of endeavouring to get out of the

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silver—**Secretary to  
watch club—**Bona fide  
traveller—**30 & 31 Vict.**c. 90, ss. 1, 3,  
17.*

difficulty of the Act. I therefore deal with these cases as if it were a watch which had been ordered. An agent was employed by Peck in the one case, and by Yabsley in the other, to go about to solicit these people to pay money in for a watch to cost 30s.; to pay 1s. a week for thirty weeks, for what purpose? To get a watch, or something else which these men sell of an excisable character. The respondents, therefore, do receive an order for the watch by taking this money weekly. It is true that, to induce people to join, a ballot is introduced by which, if there are thirty members, the lucky member can get his excisable article of the value of 30s. at once. How does he get it? The agent, having received the money for it, gets the order for it, the excisable article is sent through the agent and to the agent, and the agent hands it to the particular person. Under these circumstances I have come to the conclusion that he is a person soliciting, taking, or receiving orders for these particular goods. In the one case he is a telegraph clerk and in the other case he is a fellmonger, and I cannot see how it can be said that he is a traveller. He does not cease to be a fellmonger, and he works in a fellmonger's yard, and never goes from that place. The place where the collecting takes place is in the yard, and the ballot takes place in his house, and it cannot be said that he comes within the exception of the "*bona fide* traveller," and in my judgment he is not brought within it, but he clearly is a person who has solicited, taken, or received an order for an excisable article. This is a penal Act, and I consequently do not wish to extend it beyond what I think it ought to be extended, or to limit legitimate trade in any way; but this section was passed in order to sweep within the operation of the Act people who do a large trade in excisable articles in this way—a way which ought not to be sanctioned without an extra licence taken out.

COLLINS, J.—I am of the same opinion. My mind has vacillated a great deal in this case, because I think it is essential that the Crown, in taking penal proceedings, should make their case absolutely clear, and, so far as their case rests on sects. 1 and 3 of the Act, I am not satisfied that they have made out that the respondent in either case did trade in, or sell, any of the excisable articles under sect. 1; neither do they make out, in my judgment, that he carried on a trade or business under sect. 3. But when I come to sect. 17 I have much greater difficulty, and my mind vacillated a good deal, because I am not at all clear that what the respondents do, though it may be within the letter, is really within the spirit of the Act. It seems to me that it would have been perfectly possible for the watchmaker in London to have done all that he has done here had he employed some person to go round week by week, and do week by week what is now done by a person living on the spot. It seems to me it would be nothing more than soliciting orders in such a way as travellers solicit them, and that a person who did solicit them would be, in

point of fact, a person who spends the greater part of his time in so doing. Then there would be nothing the Crown could lay hold of in the case. Does it come within sect. 17? I think, when we look at what is done in the formation of these clubs, it really is rather an elaborate piece of machinery for bringing about an order from some person, who is ultimately chosen, to the watchmaker for a watch. The agent—that is, the respondent—is paid a commission for which he undertakes to organise a club, and to induce persons to subscribe to it, and to establish rules whereby automatically a fund is procured large enough to result in an order for a watch for a particular person, a member of the club; and when that order is given and the money sent, and not till then, the agent receives remuneration in the shape of commission, and the hope of such remuneration on his part keeps the club moving. In point of fact, it is an elaborate piece of machinery for bringing about a sale by the watchmaker to a member of the club through the agency of the respondent. Therefore, it seems to me, the case does come within the first part of sect. 17, as that of a person who solicits an order for an excisable article. That section seems to have been primarily addressed to the case of a man having a good licence himself who possibly could not be hit under sects. 1 and 3 as trading, or selling, or soliciting orders without a licence; and such persons come directly within the provision of the section, but the words are large enough, and the Legislature say they are large enough, to embrace *primâ facie* a person who was soliciting orders on behalf of another person, which other person had himself a licence. Therefore at the end of the section they have excepted the case of a *bonâ fide* traveller taking orders for goods which his employer is duly licensed to deal in or sell. I was somewhat impressed by Mr. Walton's argument on that part of the case, because I think the mischief which the Legislature aimed at is not really what appears in this section. Obviously they contemplated as lawful that a man who took out a licence in one part of the kingdom should be at liberty to send round agents to other parts of the kingdom to solicit orders. That case is not to be hampered by the necessity of taking out a licence. Here the place where the orders are solicited is a place other than where the man's business is carried on, and the orders are solicited by a person who casually meets at his workshop the different workmen whom he induces to join the club. In that sense the thing done is little, if at all, more than would be ordinarily done by a traveller, if the person who solicited the orders could be so described. I think, however, the facts are too strong in this case to admit of the agent here being called a "traveller." In one case he lives at a place where his work as a fellmonger is carried on, and his only travelling consisted in soliciting the persons who worked in the same shop to join the club. Therefore I think it would be straining the words "*bonâ fide* traveller" too far to hold that he came within the exception. Not coming

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within the exception, he falls under the general prohibition of the other part of sect. 17. I am of opinion, therefore, that these cases must go back to the magistrates.

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*Appeals allowed with costs. Cases remitted to the magistrates.*

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Solicitor for the appellant, *The Solicitor of Inland Revenue.*

Solicitor for the respondents, *H. E. Tudor, for Conquest and Clare, Bedford.*

*Excise licence  
— Soliciting  
orders for  
silver—  
Secretary to  
watch club—  
Bona fide  
traveller—  
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17.*

## QUEEN'S BENCH DIVISION.

*Monday, May 18, 1896.*

(Before GRANTHAM and COLLINS, JJ.)

DICKINS (app.) v. GILL (resp.). (a)

*Inland Revenue—Prosecution—Die for making fictitious stamp—  
Possession of die for stamping illustrations on newspaper—  
“Lawful excuse”—Post Office (Protection) Act, 1884 (47 & 48  
Vict. c. 76), s. 7.*

*Sect. 7 of the Post Office (Protection) Act, 1884, imposes a penalty upon any person who, “unless he shows a lawful excuse,” has in his possession any die for making any fictitious stamp.*

*The respondent had in his possession, without the licence or authority of the Crown, a die which was capable of making a representation of a current colonial postage stamp. This die was made abroad for the respondent, and the only purpose for which he had the same in his possession was for making upon an illustrated stamp catalogue illustrations of the stamp in question to appear on the catalogue with illustrations of other stamps chiefly for sale to stamp collectors. The die was capable of making a fictitious stamp, but it was found that the facts proved absolute bona fides on the part of the respondent, and that there was a certainty that he would not use the die for any improper purpose:*

*Held, that the circumstances under which the respondent had the die in his possession did not constitute a “lawful excuse,” and*

(a) Reported by W. W. ORR, Esq., Barrister-at-Law.



*that the respondent was therefore liable to the penalty imposed by the section.*

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CASE stated by Sir John Bridge, chief metropolitan magistrate, sitting at Bow-street.

The respondent appeared on the 7th day of November, 1895, to answer an information exhibited by the appellant, an officer of Inland Revenue, for that he between the 17th day of May and the 8th day of June, 1895, had in his possession a certain die and instrument for making a fictitious stamp, contrary to the form of the statute. The magistrate dismissed the information.

The proceedings upon the information were for the recovery of the penalty of 20*l.* imposed by sect. 7 of the Post Office (Protection) Act, 1884 (47 & 48 Vict. c. 76), which section is as follows :

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Fictitious  
stamp die—  
Possession—  
Lawful excuse  
—Post Office  
(Protection)  
Act, 1884—  
47 & 48 Vict.  
c. 76, s. 7.

A person shall not: (a) Make, knowingly utter, deal in, or sell any fictitious stamp, or knowingly use for any postal purpose any fictitious stamp; or (b) have in his possession, unless he shows a lawful excuse, any fictitious stamp; or (c) make, or unless he shows a lawful excuse, have in his possession any die, plate, instrument, or materials for making any fictitious stamp.

Any person who acts in contravention of this section shall be liable on summary conviction on a prosecution by order of the Commissioners of Inland Revenue to a fine not exceeding 20*l.*, subject to the like right of appeal as in the case of a penalty under the Acts relating to the excise.

Any stamp, die, plate, instrument, or materials found in the possession of any person in contravention of this section may be seized and shall be forfeited.

For the purposes of this section "fictitious stamp" means any fac-simile, or imitation, or representation, whether on paper or otherwise, of any stamp for denoting a rate of postage of any of Her Majesty's colonies or of any foreign country.

The penalty sought to be recovered was for contravention of that part of sect. 7, viz., sub-sect. (c), which prohibits a person from having in his possession unless he shows a lawful excuse, any die for making any fictitious stamp.

It was proved that the respondent was a newspaper proprietor and printer carrying on business at 170, Strand, the offices of the newspaper known as *The Bazaar, the Exchange and Mart*. It was also proved that on the 8th day of June, 1895, and previously he had in his possession a die or instrument received by him from one Van Hoytema, who had received it from the continent of Europe, and that the respondent had ordered it to be made for him for use in illustrating the philatelist's supplement of *The Bazaar, the Exchange and Mart* newspaper, and that it had been made and delivered accordingly. It was proved that with the said die or instrument imitations or representations of a 2½*d.* Cape of Good Hope current postage stamp could be produced. An original and two such imitations or representations printed in colour by way of test by Messrs. De la Rue and Co. were produced before the magistrate and were exhibits in this case. Mr. Gates, who superintends on behalf of the Government of the Cape of Good Hope the transmission by Messrs. De la Rue of the genuine Cape of Good Hope stamps, swore that the impressions produced were a very fair imitation of his genuine stamps. It was proved,



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c. 76, s. 7.

however, on behalf of the respondent, or admitted, that the only purpose for which he had ordered and had in his possession the said die was for making upon the pages of an illustrated stamp catalogue or newspaper illustrations in black and white, and not in colours, of the Cape of Good Hope stamp in question; and that such illustrations were intended to appear thereon together with illustrations of other stamps, and that such catalogues were intended for sale only to stamp collectors and others, and as part of a newspaper published for the instruction and amusement of readers of and persons buying such paper.

It was contended on behalf of the appellant that the possession of the die or instrument without licence or authority from the Crown was a contravention of the statute, and that the purpose for which the respondent had the die in his possession did not constitute a lawful excuse within the meaning of the statute. It was contended on behalf of the respondent that, inasmuch as it had been proved or admitted that the die was used only, and intended to be used only for the purposes aforesaid, the respondent had shown a lawful excuse for the possession of the die.

The learned magistrate found that the respondent did have in his possession a die or instrument capable of making a fictitious stamp. That there were facts which showed absolute *bona fides* in the respondent, and that there was a certainty that the respondent would not use the die for any improper purpose. The magistrate thought that this was evidence of a lawful excuse, and found as a fact that there was a lawful excuse and dismissed the information.

The question for the Court was: Whether it appeared on the evidence as a matter of law that there was no lawful excuse, and that consequently the magistrate was not entitled to find, as a fact, that there was a lawful excuse.

Sir Robert Finlay (S.-G.), (*Danckwerts* with him) for the appellant.—The decision of the learned magistrate really changes the words of the section. “Without lawful excuse” does not mean with guilty knowledge, as the magistrate has read the section. He has read it in this way, “makes or for any unlawful purpose has in his possession any die,” &c. That is not the enactment. A die of this kind which is capable of making imitations of stamps is a most dangerous thing, and the intention of the Legislature was to prohibit absolutely the making of it in this country, and to prohibit absolutely the possession of it in this country without lawful excuse. There is no qualification in the prohibition as to making—“a person shall not make,” &c.—and any person making such a die in this country beyond all question incurs the penalty. The Legislature had also in view the case where a die might be made abroad, and might be found in the possession of a person in this country, and, to meet the case where a die is found in the possession of a person in this country without its being shown that he was the maker, they provide that “a person shall not, unless

he shows a lawful excuse, have in his possession any die or materials for making any fictitious stamp." These words "without lawful excuse" were intended to cover any case of a custom-house officer who properly in the execution of his duty seizes such articles of import, or the case of a constable who seizes them, or the case of a magistrate who had them in his possession while investigating a case. The contention for the respondent must be that "without lawful excuse" means "for a guilty purpose," and it would amount to this, that unless possession were for a guilty purpose there would be no liability under the section. That is contrary to the plain meaning of the section and it is perfectly incredible that the making should be a matter which admits of no justification under this section, but that the possession should by virtue of these words "without lawful excuse" be rendered not obnoxious to any punishment so long as there was no guilty intent.

*Charles Mathews* for the respondent submitted in the first place, that what was decided here was a question of fact, and of fact only, that question of fact being whether, upon the circumstances proved or admitted, there was lawful excuse, and the learned magistrate had found as a fact, as he said in express terms, that there was "lawful excuse" within the section. There was no question of law involved, and, the question being one of fact, the decision of the magistrate could not be reviewed here. In the second place "lawful excuse" does not mean merely the authority of the Crown. The contention of the Solicitor-General came to this that lawful excuse means the authority of the Crown, and that only. But that was not the true reading of this section, or of the other sections in which the words "lawful authority" and "lawful excuse" occur. The words "authority" and "excuse" have different meanings generally, and they are intended to have different meanings in this very Act, because, turning to sect. 6 of the Act, it would be found that persons are prohibited from doing certain things without "due authority." Turning to sect. 7—the section now in question—the Court would not find the word "authority" at all, and the word "authority" does not occur in the section. There there was a different word altogether, the word "excuse," and it was submitted that not only in the English language have these two words different meanings, but that also in this very Act it is recognised that they have different meanings. That went to show that "excuse" being a different thing from "authority," it is not necessary under sect. 7 to produce the authority of the Crown for the having in possession any fictitious stamp. He admitted that sect. 7 did absolutely prohibit the making of fictitious stamps or dies; but with regard to uttering, dealing in, or selling of any fictitious stamp, it was not an offence under sub-sect. (a) unless done knowingly. Passing to sub-sect. (b), that sub-section said that a person shall be liable if he have in his possession any fictitious stamp—not "knowingly" or "fraudulently," or with a guilty mind, but—unless he shows a "lawful

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excuse.” So under sub-sect. (c)—except as to the making—a person was liable, unless he showed a “lawful excuse.” It could not be the meaning of these sub-sections that a person must be convicted unless he shows the authority of the Crown for the possession which is complained of. In the case of a stamp collector who has in his possession a very large number of stamps if he has one which is fictitious, but which he does not know to be fictitious, according to the contention of the Crown he is defenceless and must be convicted, unless he can show that he has that fictitious stamp in his possession on the authority of the Crown. That was not the meaning of the section, but it was that if a person is in innocent possession, in the sense that he is in unconscious possession, of a fictitious stamp, that is a perfect defence, and that was precisely what the magistrate had found in this case. If the possession of the respondent under sub-sect. (c) was a perfectly innocent possession that was a good answer, and if it were not so many innocent persons would be liable to these penalties, which they would be powerless to resist. It was clear that innocent possession was a perfectly good defence under the section. There were a number of statutes relating to coining and forgery, and in all of them was to be found the distinction drawn as between “authority” and “excuse” showing that “excuse” does mean something different from authority,” and less than “authority.” As illustrating the above distinction between “lawful authority” and “lawful excuse,” he referred to 2 Will. 4, c. 34, s. 10 (dealing with offences relating to coining tools); 1 Will. 4, c. 6, s. 19 (dealing with the possession of foreign bank notes); 24 & 25 Vict. c. 99, s. 24 (as to making or having in possession coining tools); 33 & 34 Vict. c. 58, s. 5 (as to forgery of stock certificates); and 54 & 55 Vict. c. 38, s. 13.

Sir R. Finlay (S.-G.) in reply.

GRANTHAM, J.—In our judgment the respondent has failed to uphold the decision of the learned magistrate, and the appellant is entitled to succeed. The case is one of very considerable importance, and has been argued at length; but I confess I have not altered the opinion I formed when the case was first read, that the learned magistrate had mistaken the meaning of the words “lawful excuse” in the determination at which he arrived. Practically what the magistrate has held was this, that in his judgment belief on the part of the respondent that he was not doing wrong was a “lawful excuse,” and that was the contention for which the respondent has so strenuously argued. I cannot think that that view is well founded. I cannot think that the respondent’s belief that he thought that he was not doing wrong when he was doing wrong is a “lawful excuse.” What the Legislature has said is, that you are not to make a die that will make a fictitious stamp, and if you do make it you shall be liable to a penalty. In this case the respondent cannot rely on the ground taken for him in argument, namely, that he believed he was not doing wrong, because he must admit

that he knew he was doing wrong. I will assume that he believed that if he could only get the die he would not be doing wrong; but in order to get it he was bound to do wrong. Knowing that it could not be made in this country, he went, or sent, abroad and had it made there, for the very purpose of evading the penalties which he would have incurred under the Act if he had made it here. That being so, he was acting, in my judgment, illegally and unlawfully in having this die made, and I think he could have been made liable under that part of the section; but it was found and admitted that he had not made it. Under the circumstances it would be very difficult for him to show any innocence after that die came into his possession, and he has had it in his possession for the purpose of showing what the stamp was, and for that purpose he makes upon his paper illustrations of the stamp in question. It is true he does not put the same colours on, but that could be done afterwards without any difficulty. Therefore he has in his possession a die which can be used for the purpose of making a fictitious stamp. That is admitted; but he says: "I want to show people what the original stamp is; that is my object." I think that is not a lawful excuse, because it is wrong to have the die at all. But it was argued that this may not be illegal, because, in some cases, there are the words, "without authority," so that authority could be given for having the die, and it was endeavoured to be shown that, as the word "authority" was omitted in this section, and the word "excuse" put in, for some reason or other, an innocent motive must be an "excuse." I confess I cannot see the analogy, because in all these statutes to which our attention has been called, the word "authority" is used where it is the "making" of the thing which is in question. I can well conceive many instances, and there may be many cases, where it would be very hard for persons to be punished for being in possession of a thing the possession of which they did not know to be illegal, and that, to my mind, would be a "lawful excuse." For instance, under sub-sect. (b) if a person bought a fictitious stamp, it would be hard that that person should be punished and made liable to pay a fine because his knowledge was not sufficient to enable him to know whether it was good or bad; and that, I think, would be a "lawful excuse;" but the mere fact that he believed he had authority to have it would not be a lawful excuse. I do not think that the case of *Reg. v. Harvey* (23 L. T. Rep. 856; L. Rep. 1 C. C. 284) referred to by the Solicitor-General, where it is said that "excuse" is equivalent to belief of "authority," is of any assistance to the respondent. I give a wider interpretation to the word "excuse," and the respondent cannot rely on that because he could not believe that he had authority to have a fictitious stamp in his possession, as though he had been taken in in the purchase of it. If he had been able to excuse himself for having the stamp by saying that he believed it was

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genuine and not fictitious, that that would seem to me to be an excuse in law, and therefore a "lawful excuse." When we come to sub-sect. (c), can it be said that the respondent can excuse himself for having this die made abroad because he wants to have a fictitious stamp made here, knowing that he could not have an instrument to make a fictitious stamp made in this country? It seems to me, therefore, that—the words "without authority" being absent from the word "make"—the words "lawful excuse" must be construed more strictly than they would be if we had the words "without authority" as we have in the earlier Acts. In my judgment, therefore, the appellant is entitled to judgment.

COLLINS, J.—I am of the same opinion. I think the act done by the respondent was clearly within the mischief which this Act of Parliament strikes at. It is obvious that the purpose of the Act is in every way to make it illegitimate for persons to do that which by the policy of the law can only be done with the authority of the Crown. Therefore it deals with as many possible ways of interfering with the monopoly of the Crown in these matters as occurred to the draughtsman of the Act. The section begins by saying, "A person shall not make," that is an absolute prohibition against making. Then it introduces the word "knowingly" with respect to "uttering," because that is something which might be done quite innocently, and therefore it is necessary to introduce the word "knowingly" there, whereas it is not necessary in the case of the word "make," which in itself involves a conscious act on the part of the person who does it. Then the sub-section goes on, "knowingly utters, deals in, or sells," &c. Those are conscious acts. Then we come to sub-sect. (b): "Have in his possession unless he shows a 'lawful excuse' any fictitious stamp." There, again, that must be a conscious act, and what is struck at is a person having these things consciously in his possession, and therefore being obliged to defend that possession by making an excuse; and, as a practical matter, I think it would be impossible to divide the innocent from the culpable part of the act of a person who is challenged with being in possession of a fictitious stamp. It would not be pertinent for him to say "I can explain how I came to get possession of it," unless he was prepared to defend the retaining possession of it, and the moment the proper authority intervened he would be compelled to hand it back under the later paragraph of the section. Therefore, even if he came by it unconsciously, his attention would be drawn to the fact that he was in possession of it, and then, if he could not give a lawful excuse, I think he would have to give it up, and I do not think that the fact that he got it unconsciously could be considered a "lawful excuse" for his retaining it after the proper authority had intervened. Then we come to the next paragraph (c), under which this charge is made, and it is open to exactly the same observations that I have already made.



What we are dealing with here is, undoubtedly, on the facts a conscious possession of a die for making a fictitious stamp, within the meaning of sub-sect. (c), and it would be very difficult and almost impossible to suppose a case of a person unconsciously getting possession of a die for making a fictitious stamp. A die a person might get hold of, but a die for making a fictitious stamp it is almost impossible to suppose anybody could get possession of without knowing that it was for making a fictitious stamp. If it is not for making a fictitious stamp the offence is not committed; if it is for making a fictitious stamp it is very difficult to suppose anybody could unconsciously have possession of it, and therefore could be relying on that as an answer to the charge. But even supposing it were possible, as was suggested, for a person to buy a die for making a fictitious stamp without knowing that he was doing so, it is very difficult to suppose it, because his object in getting it is to enable him to complete his collection, and therefore it would be no use to him unless it was a die for the purpose of making a fictitious stamp. Supposing he could get it into his possession innocently and the executive asks him to give it up, then, if not before, it seems to me, he is acting in contravention of the section if he claims to keep it without making a "lawful excuse." What is the excuse the respondent avers here? The excuse is that he wanted it for his own purposes in order to print *fac-similes*, not in colours, on his paper. It seems to me that is not a "lawful excuse." It may be a proper motive on his part, but it is not one the Act can tolerate, and it would certainly be within the mischief of the Act. If any person, whether a stamp collector or not, were at liberty to import dies for the purpose of making fictitious stamps, simply for the purpose of curiosity or antiquarian interest, it is obvious that the mischief of the Act would arise if that were not in contravention of the law. Therefore I entirely agree that this appeal must be allowed.

*Appeal allowed with costs. Case remitted to the magistrate with a direction to convict.*

Solicitor for the appellant, *The Solicitor of Inland Revenue.*

Solicitors for the respondent, *Powell and Skues.*

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## TRIAL AT BAR.

*July 20 and 21, 1896.*

(Before Lord RUSSELL, C.J., POLLOCK, B. and HAWKINS, J.)

REG. v. JAMESON and OTHERS. (a)

*Constitutional law—British subject out of jurisdiction—Application of statute—Construction of statutes—Foreign Enlistment Act, 1870 (33 & 34 Vict. c. 90)—Preparing military expedition against friendly State—Proclamation of Act—Coming into operation of Act—Criminal law—Indictment—Necessary averment—Matter of inducement—Sufficiency of general allegation—Conclusion contra pacem—Allegations of allegiance.*

*A British subject is capable of committing a crime within the jurisdiction, while he is himself without Her Majesty's dominions.*

*A British subject who is outside Her Majesty's dominions commits an offence against the Foreign Enlistment Act, 1870, if he assists in the preparation or fitting out of an expedition, unlawful under that Act, which is prepared or fitted out within Her Majesty's dominions.*

*Semble, a British subject commits an offence against the Foreign Enlistment Act, 1870, if he is employed in an unlawful expedition against a friendly State, even if he be so employed outside Her Majesty's dominions.*

*A statute is to be construed primâ facie to apply only to the United Kingdom, but a statute applicable to Her Majesty's dominions is, if the context permits, to be construed as applying to all British subjects wherever they may be.*

*Where it is provided that a statute shall come into operation in a certain area after the occurrence of a certain event, it is sufficient in an indictment for an offence against the statute to allege generally that the statute was in operation at the time when, and in the place where, the offence is alleged to have been committed.*

*The conclusion of an indictment that the offence is against the peace of the Queen, is an allegation that the person charged therein is a British subject.*

**A**N indictment was found by the grand jury at the Central Criminal Court charging Leander Starr Jameson, Sir John Christopher Willoughby, Bart., the Hon. Henry Frederick

(a) Reported by A. A. BETHUNE, Esq., Barrister-at-Law.

White, Raleigh Grey, the Hon. Robert White, and the Hon. Charles John Coventry, with certain offences against the Foreign Enlistment Act, 1870 (33 & 34 Vict. c. 90).

The indictment having, on the motion of the Attorney-General, been moved into the Queen's Bench Division by *certiorari*, and the defendants having by their solicitors pleaded "Not Guilty," on the motion of the Attorney-General a trial at bar was ordered.

The first count of the indictment charged that the defendants, "on the first day of November, in the year of our Lord 1895, and on divers days and times between that day and the 30th day of December in the year aforesaid, within the limits of Her Majesty's dominions, and after the coming into operation therein of the Act called 'the Foreign Enlistment Act, 1870,' and without the licence of Her Majesty, were unlawfully engaged in the preparation of a military expedition to proceed against the dominions of a certain friendly State, to wit, the South African Republic."

The second count charged that, "within the limits of Her Majesty's dominions, and after the coming into operation therein of the Act called 'the Foreign Enlistment Act 1870,' a military expedition was prepared to proceed against the dominions of a friendly State, to wit, the South African Republic."

And that the above-named defendants "on the said 1st day of November in the year aforesaid, and on divers days and times between that day and the 30th day of December in the year aforesaid, within the limits of Her Majesty's dominions, and after the coming into operation therein of the said Act called 'the Foreign Enlistment Act, 1870,' and without the licence of Her Majesty, were unlawfully engaged in the preparation of such military expedition, &c."

The third, fourth, fifth, sixth, seventh, and eighth counts similarly charged that the defendants were engaged "in the fitting out" of the expedition, "assisted in the preparation" of the expedition and "assisted in the fitting out" of the expedition."

The ninth and tenth counts were similar in terms to the second count, but did not charge that the defendants were within Her Majesty's dominions at the time when they assisted in the preparation of and assisted in fitting out the expedition.

The eleventh count charged that the defendants "were within the limits of Her Majesty's dominions and without the licence of Her Majesty unlawfully employed in certain capacities, to wit, as officers in such expedition."

The twelfth count was similar to the eleventh, but did not charge that the defendants were within the limits of Her Majesty's dominions when so employed, nor that the Foreign Enlistment Act, 1870, was in operation at the place where the defendants were so employed.

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*Lyttelton*, and *Howard Spensley*, for L. S. Jameson, Sir J. C. Willoughby, H. F. White, and R. White; Sir *Frank Lockwood*, Q.C., *J. P. Wallis*, and *J. Roskill*, for R. Grey and J. C. Coventry. —The whole of the indictment is bad. In every count is alleged generally that at some place within Her Majesty's dominions the Foreign Enlistment Act, 1870, was in operation, and this is insufficient. If the word "within" is to be taken as meaning "in some part" the counts are void for uncertainty; if as meaning "in every part" then the Crown must prove that the Act was proclaimed in every part of Her Majesty's dominions, for until proclaimed the Act is not in operation in any part of Her Majesty's dominions outside the United Kingdom. Every fact that is to be proved must be stated in the indictment, the charge must be laid positively: (*Hawkins*, P. C., bk. 2, c. 25, s. 60; *R. v. Crowhurst*, 2 Ld. Raym. 1363.) To allege that the Act was in operation is to allege a conclusion of law without alleging the facts upon which that conclusion must depend, whereas every fact necessary to make the act committed a criminal offence must be affirmatively and distinctly alleged. In the case of *R. v. Woolcock* (5 C. & P. 516) the defendants were indicted under the Riot Act (1 Geo. 1, c. 2, s. 1) for remaining together one hour after the making of proclamation under that statute, but because the count containing this allegation did not affirmatively allege that proclamation under the statute had been made it was held to be bad. So in *R. v. Everett* (8 B. & C. 114) a count in an information charged that Robert Hooper was a person employed in the service of the Customs, and that it was his duty as such person employed in the Customs to seize forfeited goods. Objection was made to the count, and Lord Tenterden, C.J., in holding that the objection must prevail, said: "The allegation that Hooper was a person employed in the service of the Customs is an allegation of fact. The allegation that it was his duty to seize goods which upon importation were forfeited is an allegation of law. That being so, the fact from which that duty arose ought to have been stated in the count." By 11 & 12 Vict. c. 2, s. 2, an Act applying only to Ireland, it was enacted that the Act should apply to a county after the Lord-Lieutenant had so declared by proclamation. The Court of Criminal Appeal in Ireland held that the act of proclamation was a necessary averment in an indictment for an offence under the Act: (*Reg. v. Otway*, 1 Ir. Com. Law R. 69.) And again, with regard to the Criminal Law and Procedure (Ireland) Act, 1887 (50 & 51 Vict. c. 20), sect. 5 of which provides that the Lord-Lieutenant may by proclamation declare the Act to be in force within any specified part of Ireland; sect. 6, that the Lord-Lieutenant might by proclamation, to be called a special proclamation, declare certain associations to be dangerous; and sect. 7 that from and after the date of a special proclamation the Lord-Lieutenant might by Order in Council, to be published in the prescribed manner, suppress any association named in the special proclamation and that from and after the

date of such order, and during the continuance thereof, a person publishing the proceedings at a meeting of a suppressed association should be guilty of an offence, the Court of Queen's Bench in Ireland held that, in order to establish the guilt of a person charged with the commission of such an offence, it was necessary to prove the due publication of the Order in Council: (*Walsh v. The Queen* (*Somerville*, respondent), L. R. Ir. 22 Q. B. & Ex. 314.) The rule is correctly stated in Stephen's Digest of the Law of Criminal Procedure, at p. 156: "An indictment must state explicitly and directly, and not by way of recital, every fact necessary to constitute the offence charged, whether such fact is an external event or an intention, or other state of mind, or a circumstance of aggravation affecting the legal character of the offence alleged, unless any such fact is necessarily implied by what is so expressly stated, and the contrary of everything not so expressed or implied will be presumed in favour of the person accused." The effect of proclaiming the Foreign Enlistment Act, 1870 (33 & 34 Vict. c. 90) in a colony is to make that statute a colonial statute, and the passing of a colonial statute has to be proved as a fact. By alleging generally that the Act was in operation the Crown avoid stating a fact which the jury can try and endeavour to make it a matter for the Court to decide as a matter of law, whether what the Crown intends to prove amounts to a proclamation. By the allegation that the Act was in operation the proclamation of the Act can no more be necessarily implied than the proclamation of the Riot Act could from the allegation in the count in *R. v. Woodcock* (*sup.*) A further objection to the ninth count is that, while it alleges that the expedition was prepared within Her Majesty's dominions, it does not allege that the defendants assisted within Her Majesty's dominions. The Act does not apply to persons outside Her Majesty's dominions; the limitation to the dominions of Her Majesty is a limitation which is implied in every Act of Parliament. This is laid down by Pollock, C.B. in *Rosseter v. Cahlan* (22 L. J. 128, Ex.). But even if this were not the rule of construction, sect. 2 of the Foreign Enlistment Act, 1870 (33 & 34 Vict. c. 90) expressly limits its operation to the dominions of Her Majesty. In every case in which it is intended that a statute shall apply to British subjects when beyond the bounds of the Queen's dominions, that intention is expressed in the statute; thus it was held that a man committing bigamy outside the dominions of the Crown could not be convicted under 1 Jac. 1, c. 11. The statutes 12 Geo. 3, c. 11; 59 Geo. 3, c. 69; 11 Vict. c. 12; 24 & 25 Vict. c. 100, s. 9; the Explosives Act (46 & 47 Vict. c. 3), s. 3; the Criminal Law Amendment Act (48 & 49 Vict. c. 69), s. 2; the Official Secrets Act (52 & 53 Vict. c. 52), s. 6; the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 712, are all expressly extended to offences committed outside the jurisdiction. In order to extend the operation of 5 Geo. 4, c. 113 (the statute consolidating the statutes relating to the

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slave trade) to British subjects out of the jurisdiction, it was necessary to pass 6 & 7 Vict. c. 98, which statutes were considered in *Santos v. Illidge* (3 L. T. Rep. 155 ; 8 C. B. N. S. 861.) The Foreign Enlistment Act, 1870 (33 & 34 Vict. c. 90) repeals and is substituted for 59 Geo. 3, c. 69, of which Act only certain sections applied, and then by express words to British subjects abroad. The ninth and tenth counts did not allege that what was done was done within the Queen's dominions. The eleventh count did not allege that at the place where the things were done the Act was in operation ; and the twelfth count alleged neither that the things done were done within the Queen's dominions, nor that at the place where they were done the Act was in operation. And, if the Act did apply outside the Queen's dominions, it could only apply to British subjects, and there was no allegation in any count of the indictment that the defendants were British subjects.

The *Attorney-General* (Sir Richard E. Webster), the *Solicitor-General* (Sir Robert B. Finlay), *H. Sutton*, *C. W. Matthews*, *Horace Avory*, and *J. F. P. Rawlinson* for the Crown.—The argument for the defendants confused the facts which had been proved because they constituted the offence, and those matters of inducement which are not material for the purpose of proving the offence. It was sufficient to allege generally that the offence was committed within Her Majesty's dominions, and was when committed contrary to the law of Her Majesty's dominions. This was provided for by sect. 17 of the Act. Mere matters of inducement need not be stated with so much certainty as the statement of the gist of the offence : (Archbold's Pleading and Evidence in Criminal Cases, 21st edit., p. 62). The authority for this proposition was *R. v. Bidwell* (1 Den. 222). In the case of *R. v. Everitt* (*sup.*) it was necessary to allege as a matter of fact the particular duty of the officer, because it was one of the facts constituting the offence. The allegation that the Foreign Enlistment Act, 1870 (33 & 34 Vict. c. 90) was in operation was an allegation that any person doing acts contrary to the statute in the territory within which the acts were committed commits an offence ; it was not an allegation of any particular duty on the part of any particular individual. The specific allegation of facts constituting the offence was that without the licence of Her Majesty the defendants were unlawfully engaged in the preparation of fitting out of a military expedition. In each of the counts of the indictment the facts necessary to constitute the offence were alleged, and these only were material. If the sense was clear, nice exceptions to an indictment should not be allowed : (per Lord Ellenborough, *R. v. Stevens*, 5 East, at p. 260). As to the objections to the ninth, tenth, eleventh, and twelfth counts, the contention of the Crown was that, if an unlawful expedition has been prepared, it is an offence to assist in or engage in the preparation of, or to be employed in any capacity in, that expedition, though the acts are done outside the jurisdiction. This



point arose in the case of *Reg. v. Sandoval and others* (56 L. T. Rep. 526; 16 Cox. C. C. 206; 3 Times L. Rep. 436): (Wheeler's English and American Foreign Enlistment Acts.) As to the objection to the twelfth count that count alleged the state of things to which it was intended that sect. 11 of the Act should apply, the joining of an unlawful expedition by persons who have gone outside Her Majesty's dominions to do so; and that the counts concluded "against the peace of our Sovereign Lady the Queen, &c.," was sufficient to show that the defendants were British subjects: (*R. v. Sawyer*, R. & R. 294.)

Sir E. Clarke, Q.C. in reply.

*Cur. adv. vult.*

July 21.—Lord RUSSELL, C.J.—We have now to deal with an application made on the part of the defendants to quash the indictment, or, in the alternative, to quash the seven counts in the indictment. The position of the case is, that the defendants have not demurred to the indictment, nor to any count in it, but have put themselves upon their country by a general plea of not guilty. The application to quash the indictment, or the counts of the indictment, is one the granting of which is, within certain limits, in the discretion of the Court. If the Court should be of opinion that the indictment is clearly bad, or that any counts in the indictment are clearly bad, it would be the duty of the Court to quash one or the other or both, as the case might be. But if the matter were even one of doubt, if the opinion of the Court were not clear, but the construction of the indictment was such, or the presence of certain counts in the indictment was such, as to cause the embarrassment of the defendants in their defence, so that it could be said that the condition of the indictment, or some counts in it, interfered with the fair justice of the case, then, equally, the Court would have a discretion to quash one or the other. When these objections were yesterday taken and urged in an able argument, the Court thought it right to take time to consider their judgment, not because of any real difficulty that the Court entertained as to the view that ought to be taken of these objections, but because of the far-reaching consequences which they entail had those objections, or any of them, prevailed. We have come to the conclusion that none of the objections either to the indictment as a whole, or to any of the counts in that indictment ought to prevail, so as to induce us to make the order to quash one or the other of them. The first objection taken was one which went to the entire indictment; that is to say, if it were a good objection to the first count, with reference to which it was argued, it is equally an objection to the remaining counts. The objection divides itself into two divisions. It was said first that it did not state that the place in which it was alleged that the illegal preparation of the expedition took place was within the limits of Her Majesty's dominions, and in a part within the limits of Her Majesty's dominions as to which the Act was in operation. The Act in question provides that: "If any person within the limits of Her Majesty's dominions, and without

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the licence of Her Majesty, prepares or fits out any naval or military expedition the following consequences shall ensue." And in the third section of the Act it is provided that it shall come into operation only in British possessions outside the United Kingdom when proclaimed in the manner provided in that section. The words of the indictment upon which the question turns are these: "Within the limits of Her Majesty's dominions and after the coming into operation therein of the said Act called 'the Foreign Enlistment Act, 1870,' and without the licence of Her Majesty, were unlawfully engaged in the fitting out of such military expedition to proceed against the dominions of the said friendly State. Now it is said in argument that that may mean either of two things. It may either mean that there was some place within the limits of Her Majesty's dominions, but necessarily the place where the preparation of the expedition took place, in which the Act was in operation; or it may mean that it was in operation in all places within Her Majesty's dominions. Now, in considering a question of this kind, even in considering the question of the validity of pleading, one must have some regard to ordinary understanding of language, and apply some measure of common sense to its construction; and applying that test I cannot doubt that that states reasonably and intelligibly that the defendants, in a place within Her Majesty's dominions, and in which the Act of 1870 was in operation, were engaged in the preparation of an expedition which would be an offence against the Act. What the prosecution must establish at the trial is, not that in some place within the Queen's dominions the Act was in operation, but as the initial basis of their prosecution, that in the place in which the expedition was prepared within Her Majesty's dominions the Act was in operation. If they fail to prove that, the objection will be fatal. I therefore think that that first objection cannot prevail. The second objection was this, that as the 3rd section of the Act provides that the Act is to come into operation outside the United Kingdom, *i.e.*, in British possessions outside the United Kingdom, only on proclamation, the count is bad, and each of the counts has the same fault, if it be a fault, in not stating that there was such a proclamation. I think that objection is not valid. If in the result it be necessary, in order to show that the Act is in operation in the British possessions, to prove that a proclamation took place, then that fact of the proclamation must be proved; but the statement that the Act was in operation is a sufficient statement to the effect that the law existing in the place where you committed the offence was, amongst others, this Act of 1870, and against that Act you have offended. I therefore think that the allegation that the Act was in operation is enough, and when the question arises it will be determined whether, if proclamation were necessary, the proclamation took place, and whether that proclamation validly and properly took place. I was struck by

one of the arguments suggested by the learned counsel, that this mode of pleading was resorted to by the Crown because it might have—and it was suggested indeed that that was its object—the effect of withdrawing certain questions from the jury which would otherwise be for the jury, and to cause those questions to come within the domain of the Court, and exclude the jury from them. I have tried to follow that argument, but I have failed to understand it. In any case it will be for the Court, upon its responsibility, to lay down what will be necessary to cause the Act in question to be operative in the given place. That, in any view of the pleading, must be for the Court. But it must also remain, in any view of the pleading, for the jury to determine the fact whether the conditions which the Court have laid down as matter of law as necessary to be complied with have or have not, in fact, been complied with. I pass, therefore, from this first objection, as to which I have intimated that that objection does not prevail either as to the first count or any of the counts in this indictment. The remaining counts, I think, I may briefly deal with ; but, in order that I may do so intelligibly, I should like to make a general observation or two upon the rules of construction applicable to statutes such as this. It may be said generally that the area in which a statute is to operate, and that the persons against whom it is to operate, are matters of construction upon the statute itself. The object of construction is to arrive at what the Legislature meant by the language that they have used in their enactments. But there may be suggested some general rules, for instance, if there be nothing which points to the contrary intention the statute will *primâ facie* be taken to apply only to the United Kingdom. Where, as here, it is applicable to the Queen's dominions, it will be taken to apply to all the persons in the Queen's dominions, including those who owe temporary allegiance, foreigners living in the country during their residence in the country ; and according to its context it may be taken to apply to the Queen's subjects everywhere. One other general canon of construction, and that is this : that, if any construction otherwise be possible, an Act would not be construed as applying to foreigners in respect to Acts done by them outside the dominions of the sovereign power enacting. That is a rule based upon international law, by which one sovereign power is bound to respect the subjects resident in its own territory of every other sovereign power. Now, applying those considerations in the present case, here not only does the 2nd section provide "this Act shall extend to all the dominions of Her Majesty including the adjacent territorial waters," which means that the "preparations" mentioned in the 11th section apply to preparations which may take place within a part of the dominions of Her Majesty, but it is also clear from subsequent provisions that it is intended to apply to subjects of the Queen anywhere ; and, therefore, it follows that it applies to foreigners within the Queen's dominions, because you have, in considering

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that point, to consider the mischief aimed at by the Act. Bearing those considerations in mind, it seems to me that the objections upon the ninth, tenth, eleventh, and twelfth counts may be shortly disposed of. They seem to me to be all based on a construction of the statute, both as to the area of its operation and as to the class of persons to whom it is applied, that we cannot indorse. It is clear that there must come within the Act under this 11th section the preparation in the Queen's dominions; but we are not prepared to say that there may not be assistance in preparation, and so forth, constituting an offence in such place within the Queen's dominions in which the Act is in operation, by a person outside the Queen's dominions, and outside (if within the Queen's dominions) a place in which the particular Act operates, and we are further not prepared to say that there might not be employment, constituting an offence under the Act, even outside the Queen's dominions, so as to make any of the Queen's subjects so acting liable under the Act. One other point is made, and there is an end of the matter. I is said that it is not alleged in these later counts, and especially in the twelfth count, that the defendants are subjects of the Queen. The count concludes with the allegation that the offence is against the form of the statute, and against the peace of the Queen. In our judgment, it is not necessary to state that the defendants are, in fact, if they be so, subjects of the Queen. I will only say that, if it turns out in the course of this case that the defendants, or any of them, are foreigners, there will be every opportunity for their learned counsel to take any objection that is open to them, and to give legal effect to any defence that is attributable to that fact. One word more. We have not thought it necessary to go through, though we have considered, the various cases which have been cited. Many of them belong to a time when the right and justice and substance of the thing was sacrificed to the science of artificial statement. By many of the cases that have been cited we should not consider ourselves bound, but we arrive at the conclusion that none of them throw any real light on the question we have here to consider; none of them lay down any canon or rule of conduct applicable to the present case. The result, therefore, will be that the application, both as to quashing the whole of the indictment, and as to any counts of it, will be refused.

POLLOCK, B.—I entirely agree with the judgment that has been delivered by the Lord Chief Justice, and with the reasons which he has given in support of his judgment, and I desire to add nothing.

HAWKINS, J.—I also agree with the judgment of the Lord Chief Justice, and I have nothing to add.

A special jury was then empanelled, and the trial proceeded.

Solicitor for the Crown, *The Solicitor to the Treasury*,

Solicitors for the defendants, *Hollams, Son, Coward, and Hawksley*.

## CROWN CASES RESERVED.

*Saturday, August 1, 1896.*

(Before Lord RUSSELL, C.J., POLLOCK, B., HAWKINS, GRANTHAM,  
and LAWRENCE, JJ.)

REG. v. CHAMBERS. (a)

*Indictment—Necessary averment—Offence not originally indictable  
—Claim to be tried by a jury—Summary Jurisdiction Act, 1879  
(42 & 43 Vict. c. 49), s. 17.*

*Where an indictment is preferred, in accordance with the provisions of sect. 17 of the Summary Jurisdiction Act, 1879, against a person who, when charged before a court of summary jurisdiction with the commission of an offence punishable summarily, claimed to be tried by a jury, the Court has jurisdiction to deal with the indictment as if the offence had been originally indictable, and the fact that the indictment is preferred in consequence of the defendant's claim to be tried by a jury is not a necessary averment.*

CASE stated by the chairman of the Norfolk Quarter Sessions.

The prisoner being charged before a court of summary jurisdiction with the commission of an offence punishable under 24 & 25 Vict. c. 97, s. 41, on summary conviction, claimed, in accordance with the provisions of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), to be tried by a jury, and an indictment against him was accordingly preferred at quarter sessions.

The indictment charged that he "unlawfully and maliciously did kill one dog, to wit, a greyhound, the property of Robert Howlett and ordinarily kept in a state of confinement, against the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her crown and dignity."

Upon the prisoner being arraigned, counsel on his behalf objected to the indictment on the ground that, inasmuch as the offence was not originally indictable and it was not set out in the indictment that the prisoner had claimed before the Court of summary jurisdiction to be tried by a jury in accordance with the provisions of sect. 17 of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), the indictment did not on the face of it

(a) Reported by A. A. BETHUNE, Esq., Barrister-at-Law.

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show that the Court of Quarter Sessions had jurisdiction to try the prisoner for the offence for which he was indicted.

The prisoner, acting on the advice of his counsel, refused to plead, but, the Court having directed a plea of not guilty to be entered, he was tried and convicted.

No counsel appeared on either side.

LORD RUSSELL, C.J.—The case states that at the quarter sessions for the county of Norfolk, holden at Norwich, the prisoner was charged with killing a dog. The indictment was in the following words: "That Arthur Chambers, on the 29th day of April, in the year of our Lord one thousand eight hundred and ninety-six, unlawfully and maliciously did kill one dog, to wit, a greyhound, the property of Robert Howlett and ordinarily kept in a state of confinement, against the form of the statute," &c. The case further states that upon arraignment the prisoner refused to plead, and that it was objected on his behalf that to give the Court of Quarter Sessions jurisdiction to try the case it was necessary that the indictment should show on its face that he had claimed to be tried by a jury. The short point which we have to decide is, was it necessary that the indictment should on its face show that the man had claimed to be tried by a jury? It is provided by sect. 17 of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49) that a person when charged before a court of summary jurisdiction with an offence in respect of the commission of which an offender is liable on summary conviction to be imprisoned for a term exceeding three months, and which is not an assault, may, on appearing before the Court and before the charge is gone into, but not afterwards, claim to be tried by a jury, and thereupon the Court shall deal with the case in all respects as if the accused were charged with an indictable offence, and not with an offence punishable on summary conviction. Upon the facts stated in the case I am of opinion that the Court of Quarter Sessions had jurisdiction to try the case, and that there is neither substance nor sense in the objection. The conviction must, therefore, be affirmed.

POLLOCK, B., HAWKINS, GRANTHAM, and LAWRENCE, JJ. concurred.

*Conviction affirmed.*

*Editor's Note.*—The above decision accords with that in *Reg. v. Brown*, *ante*, p. 81; 72 L. T. Rep. N. S. 22; (1895) 1 Q. B. 119. It was there held, the defendant having claimed under sect. 17 of the Summary Jurisdiction Act, 1879, to be tried by a jury, that the offence with which he was charged before the court of summary jurisdiction being one to which the Vexatious Indictments Acts applied, the prosecution could present an indictment alleging or containing counts alleging offences other than the offence in respect of which the defendant was committed for trial.

## COURT OF APPEAL.

*July 27 and 28.*

(Before Lord ESHER, M.R., KAY and SMITH, L.JJ.)

SEAMAN (app.) v. BURLEY (resp.). (a)

APPEAL FROM THE QUEEN'S BENCH DIVISION.

*Practice—Appeal—Court of Appeal—Jurisdiction—“Criminal cause or matter”—Case stated on appeal from order granting distress-warrant in respect of poor rate—Judicature Act, 1873 (36 & 37 Vict. c. 66, s. 47).*

*A case stated by justices on appeal from an order granting a distress-warrant to enforce payment of a poor rate is a “criminal cause or matter” within the meaning of sect. 47 of the Judicature Act, 1873, and no appeal lies to the Court of Appeal from the decision of the Queen's Bench Division upon such case.*

THIS was an appeal by the appellant, Seaman, from an order of the Queen's Bench Division (Day and Lawrance, JJ.) upon a case stated by justices under 20 & 21 Vict. c. 43, s. 2, and 42 & 43 Vict. c. 49, s. 33.

Seaman was the owner of premises in the parish of Paddington, which were occupied as tenement houses, and Burley was a rate collector of the parish.

The vestry of the parish of Paddington made a poor rate for the parish, under the powers conferred by the local Act 5 Geo. 4, c. cxxvi., and Seaman was ultimately rated as owner of the premises.

The rates were duly demanded from Seaman, but he refused to pay the same.

A summons was then issued, pursuant to sect. 120 of the local Act, 5 Geo. 4, c. cxxvi., upon the complaint of Burley as a collector of the parochial rates, against Seaman for non-payment of the rates.

Upon the hearing of the summons before two justices, Seaman contended that the rate was not a valid rate. The justices decided against this contention, and ordered a distress-warrant to issue. Upon the application of Seaman the justices stated a case for the opinion of the Queen's Bench Division.

(a) Reported by J. H. WILLIAMS, Esq., Barrister-at-Law.



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The local Act (5 Geo. 4, c. cxxvi.) provided:

Sect. 120. And be it further enacted that in case any person or persons charged with any such rate or rates, assessment or assessments, shall refuse or neglect, after demand made by the collector or collectors for the time being, to pay the money rated or assessed upon him, her, or them respectively, it shall be lawful for any one of His Majesty's justices of the peace for the said county, and he is hereby authorised and required to summon by writing under his hand each and every person so charged, and who shall have so refused and neglected as aforesaid, on oath being made before such justice by the collector for the time being of his having attended at the place of abode of each and every such person then intended to be summoned, and demanded the rate or rates, and of each and every such person having so refused or neglected to pay the same, to appear before such justice at a time and place to be mentioned in such summons; and if any person or persons so summoned shall refuse or neglect to attend at the time and place mentioned in such summons, or if he, she, or they do or shall attend, and shall not make it appear to such justice that, he, she, or they is or are not chargeable with such rate or rates, under the said recited Acts or this Act, then all and every the person and persons who shall have been so summoned shall pay as well such rate as the reasonable costs and charges of such summons, and in all cases where the said rate or assessment, costs and charges, shall not be paid upon the return of such summons, it shall be lawful to and for such justices, who shall have issued the same, or any other justice of the said county, and he is hereby authorised and required (on oath being made before him of the due service of such summons as aforesaid, or in case such person or persons so refusing to pay as aforesaid shall have removed out of the said parish, then on proof of such summons having been duly issued as aforesaid) to grant a warrant or warrants under his hand and seal, authorising and directing such collector, or any constable or constables, headborough or headboroughs, beadle or beadles of the said parish, to levy such rate or assessment, rates or assessments respectively, and all arrears thereof, and the expenses of the summons and of the warrant, by distress of the goods and chattels of the party so neglecting or refusing; and if within five days after such distress or distresses shall be made, the said respective rates and assessments and all arrears thereof shall not be paid, together with the costs and charges of taking and keeping the same, it shall be lawful for such collector, constable or constables, headborough or headboroughs, beadle or beadles, to cause the said goods and chattels, or a sufficient part thereof, to be appraised and sold, rendering to the said person or persons the surplus, if any there be, after deducting the said rates or assessments, and all arrears thereof, and the reasonable costs and charges attending such distress and sale; which costs and charges, in case of dispute, shall be settled and ascertained by one of His Majesty's justices of the peace for the said county of Middlesex; and in default of such distress, it shall be lawful for any such justice or justices to commit any such person or persons to the common gaol or house of correction for the said county, there to remain, without bail or mainprize, for any term not exceeding six calendar months, unless payment shall be sooner made of such sum or sums of money as shall have been found to be due and in arrear, upon all or any such assessment or assessments as aforesaid, together with all costs, charges, and expenses attending the recovery thereof, such costs, charges, and expenses to be ascertained and determined by the said justice or justices respectively.

The Divisional Court (Day and Lawrance, JJ.) affirmed the order of the justices and dismissed the appeal.

Seaman appealed.

*R. Cunningham Glen* for the respondent.—There is a preliminary objection to this appeal. The judgment of the High Court is a judgment in a criminal cause or matter within sect. 47 of the Judicature Act, 1873, and therefore no appeal lies to this court. A distress-warrant has been issued for the recovery of a poor rate, and, under 12 & 13 Vict. c. 14, it may be enforced by imprisonment. The provisions of sect. 120. of the Local Act in this case are practically identical. To show that this is a "criminal cause or matter" within the decided cases, it is enough to show that a step has been taken which may result in

imprisonment: (*Mellor v. Denham*, 47 T. Rep. 493; 5 Q. B. Div. 467; *Reg. v. Whitchurch*, 45 L. T. Rep. 379; 7 Q. B. Div. 534; *Ex parte Schofield*, 64 L. T. Rep. 780; (1891) 2 Q. B. 428; *Payne v. Wright*, 66 L. T. Rep. 148.)

*Channell*, Q.C. (*Naldrett* with him) for the appellant.—Poor rate is a debt which is barred by bankruptcy: (*Re Wetherell*, 19 L. J. 115, M. C.) Bankruptcy cannot put an end to a criminal offence. Therefore this is not a “criminal cause or matter.” The distress warrant, though it may result in imprisonment, is merely a means of enforcing the debt. Poor rate is not a fine imposed for punishing a criminal offence. All the cases cited in support of this preliminary objection are cases where a pecuniary penalty has been imposed, and the reason why penalties have been held to be criminal matters is the fact of their having been enforceable by imprisonment: (*Reg. v. Masters and others*, L. Rep. 4 Q. B. 285.) *Reg. v. Whitchurch* (*ubi sup.*) had reference to a nuisance which, being an indictable offence, is clearly a criminal matter. The Summary Jurisdiction Acts do not apply to the issuing of distress warrants for the recovery of poor rate: (*Reg. v. Price*, 42 L. T. Rep. 439; 5 Q. B. Div. 300). These proceedings are not criminal, because no crime or offence has been committed; these are merely proceedings to recover a civil debt. Proceedings before justices to enforce civil obligations are not criminal proceedings. For instance, bastardy proceedings (*Reg. v. Lightfoot*, 6 E. & B. 822; 25 L. J. 115, M. C.), where Lord Campbell, C.J. said: “The matter here in dispute was entirely of a civil nature, viz., the obligation to maintain a child, and the defendant might have been examined as a witness on his own behalf.” The same observations apply entirely to the present case. In *Sweetman v. Guest* (18 L. T. Rep. 53; L. Rep. 3 Q. B. 262) it was held that Jervis’s Act (11 & 12 Vict. c. 43) did not apply to proceedings before justices for enforcing a rate by the mere issuing of a distress-warrant, and that the duty of the justices was merely ministerial. Though the statement that the justices were merely acting ministerially was qualified in *Fourth City Mutual Building Society v. Churchwardens, &c., of East Ham* (1892) 1 Q. B. 661, the case does not say that the proceedings are criminal. All proceedings which may result in imprisonment are not necessarily criminal proceedings. The true test is, what is the nature of the matter in respect of which the proceedings are taken. The general expressions in the judgments in some of the cases in this court are too widely stated.

*R. Cunningham Glen* in reply.—The proceeding in the present case may result in imprisonment, and is, therefore, a criminal proceeding. In *Reg. v. Tyler* (60 L. T. Rep. 662; (1891) 1 Q. B. 588) the Court held that an application to a magistrate for a summons against a company to recover penalties for not forwarding a list of its members to the registrar, was a criminal proceeding, because there was a breach of a public duty

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imposed by statute. In *O'Shea v. O'Shea* (62 L. T. Rep. 713; 15 P. Div. 59) Cotton, L.J. explained his judgment in *Reg. v. Barnardo* (61 L. T. 547; 23 Q. B. Div. 305) and it was held that an attachment of a person, not a party to an action, for contempt of court was a criminal proceeding. In *Payne v. Wright* (*ubi sup.*) it was distinctly laid down that, if the proceeding might end in punishment, it was a criminal proceeding. If a person objects to the validity of a rate he has a civil remedy by appeal to quarter sessions.

Lord ESHER, M.R.—It seems to me that the question is entirely one as to procedure, and is whether the proceeding which was going on in this case was a criminal proceeding or not. Now, it can easily be seen that it is entirely a question as to procedure if we take the case of an assault. An assault may be made the subject-matter of a civil proceeding and of a criminal proceeding. An action may be brought in respect of an assault either before or after a criminal proceeding has been instituted. If a man sues in respect of an assault he may recover damages, and questions of fact which have arisen at the trial may come before this Court upon an appeal. But, if the same matter is brought before a criminal Court, though the subject-matter is precisely the same, and the witnesses and evidence the same, yet, because the proceeding is a criminal proceeding, no appeal whatever can be brought to this Court, and until lately there was no appeal to the Queen's Bench. That shows that the question is not what was the nature of the original act or thing complained of. In the case of an assault the act or thing complained of is the same in each case, whether it is dealt with by a civil proceeding or by a criminal proceeding. Even if the argument, that in this case it is a debt, were true, nevertheless if there is a legal enactment that the debt may be recovered by a criminal proceeding, then in that criminal proceeding no appeal will lie to this Court. It seems to me, however, to be wrong to say that this was a debt at all in the ordinary sense. To whom is the debt due? To no one. No one can sue for it. It is in truth a payment to be made in obedience to a public duty. It is not, I think, a debt at all. Now, what is the proceeding in this case which is to be taken to enforce that payment? The payment cannot be enforced by action; it can be enforced only by a proceeding before a magistrate. It is true that a magistrate has some civil jurisdiction in respect of which an appeal will lie to this court. Is this proceeding a civil proceeding within the rule which has been laid down in this Court? Many cases have been cited, decided before the passing of the Judicature Acts, in which this particular point could not arise. The question is, whether this case is, within the definition laid down by this Court in the decided cases, a "criminal cause or matter." This court has held in several cases that, where certain conditions are fulfilled, a case is to be treated as a criminal proceeding. The definition is not exhaustive. It is

only a rule that, where certain conditions are fulfilled, the proceeding is a criminal proceeding, and is a "criminal cause or matter" within the meaning of sect. 47 of the Judicature Act, 1873. The rule is that, where the proceeding is taken before a magistrate and is a proceeding which, at the end of the proceeding, may end in imprisonment, then the proceeding is to be considered to be a criminal proceeding, and there is no right of appeal to this Court. What, then, is the proceeding which was taken in this case? Proceedings were taken before magistrates to enforce payment of a poor rate. Before the proceedings to enforce payment were taken, the person alleged to be liable to pay might have objected to the rate, and the question might have been tried in a civil proceeding and might have been carried to this Court and to the House of Lords. In this case a summons was issued for the purpose of enforcing payment of a poor rate. What is that proceeding? The magistrate is to have the parties before him, and, if the rate is not paid, is to issue a warrant of distress for enforcing payment of the poor rate. That is the commencement of the proceedings to enforce payment of the poor rate. If that proceeding does not enforce payment, the next thing is that the person liable to pay may be sent to prison. The cases which have been cited—*Mellor v. Denham* (*ubi sup.*), *Reg. v. Whitchurch* (*ubi sup.*), *Ex parte Schofield* (*ubi sup.*), and *Payne v. Wright* (*ubi sup.*)—all say that the question is not whether the proceedings *must* end in imprisonment; that is not necessary in order to bring the case within the rule. It is sufficient if the proceeding *may* end in imprisonment. The judgments in the above cases are distinct upon that point. The doctrine, therefore, is that, if a proceeding is taken before a magistrate, and that proceeding may end, by way of procedure, at the last step, in imprisonment, then, for the purpose of an appeal to this Court, that proceeding is a "criminal cause or matter" within sect. 47 of the Judicature Act, 1873, and no appeal will lie to this Court. This case comes within that definition and no appeal lies to this Court. I wish again to say that the above definition is not exhaustive, and that there may be a right of appeal if the proceedings before magistrates are really civil proceedings. In this case the preliminary objection that there is no right of appeal is fatal, and the appeal must be dismissed.

KAY, L.J.—This is an appeal upon a case stated by a magistrate upon which the Queen's Bench Division have given their decision. A preliminary objection has been taken that, by reason of the provisions of sect. 47 of the Judicature Act, 1873, the appeal is not competent. That section provides that, "no appeal shall lie from any judgment of the High Court in any criminal cause or matter save for some error of law apparent upon the record." The question, therefore, is whether this case which has been stated is a step in a "criminal cause or matter." *Primâ facie*, looking at sect. 47, it does not refer to

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the origin of the application to a magistrate. Whether it is with reference to a civil debt or a criminal act is not the question. The question is whether the proceeding is a "criminal cause or matter." The facts in this case are that a poor rate was made, and that the appellant resisted that rate. The poor rate can be enforced under the local Act (5 Geo. 4, c. cxxvi., s. 120), which provides that if the rate is not paid upon demand the person liable to pay may be summoned before a magistrate, who may issue a distress-warrant, and that in default of distress the magistrate may commit such person to gaol for a term not exceeding six months. Now that is the proceeding which has been taken in this case. An application was made to the magistrate for a distress-warrant to enforce payment of the poor rate, and the magistrate granted the distress-warrant, but stated a case which raised the question whether the rate was good or not. That is not the only way in which a person alleged to be liable to pay the rate could dispute the goodness of the rate. He could appeal to quarter sessions, and carry the case to the House of Lords. Here the appellant did not take that course, but he took the objection when he was summoned to show cause why a distress-warrant should not be issued. The magistrate and the Queen's Bench Division have decided against him. The question now is whether he can appeal to this Court. That depends upon whether this is a step in a "criminal cause or matter." In the case of *Mellor v. Denham* (*ubi sup*) it was decided that the Court of Appeal has no jurisdiction to hear an appeal from a decision of the High Court of Justice upon a case stated by justices as to an information for contravening the bye-laws of a school constituted under the Elementary Education Act, 1874. The same has been held in several other cases where a case has been stated. Therefore the fact that a case has been stated does not alter the position. It has been argued that it does not follow from a proceeding under sect. 120 of the local Act that the person summoned must go to prison, because he can only be imprisoned if there is no sufficient distress, and that therefore this proceeding was not a criminal proceeding. That point was before the Court of Appeal in *Ex parte Schofield* (*ubi sup.*) and *Payne v. Wright* (*ubi sup.*). In the latter case Lord Esher, M.R. said: "In *Ex parte Schofield* (*ubi sup.*), a magistrate having declined to state a case on a point of law, a Divisional Court refused to grant a rule *nisi* for a *mandamus* to him to do so; and this Court thereupon, held that, as the decision of the High Court was a proceeding or step in a case the result of which might, but not necessarily must, end in a penalty being imposed, there was no jurisdiction to entertain an appeal from that decision." We are therefore bound by authority upon that point. Although it does not necessarily follow that the person summoned must go to prison, yet, if the proceeding may have the result of sending him to prison if there is no sufficient distress, that is enough to



show that the proceeding is in the nature of a criminal proceeding in respect of which no appeal will lie to this Court. It was strenuously argued that nonpayment of the rate was not a criminal offence, and that the liability to pay the rate was only a debt, and that although, if it were a criminal act, the proceedings would be criminal, yet these proceedings are not criminal if they are merely to enforce payment of a civil debt or liability. It is not at all clear that this is only a debt. But if it is provided by statute that payment of a debt may be enforced by criminal proceedings under Jervis's Act, the proceedings are none the less criminal because they are taken to enforce payment of a debt. Suppose that the statutory remedy were given merely by reference to Jervis's Act, are the proceedings any less criminal proceedings because intended only to enforce a civil obligation? I think not. If the proceeding is in its nature a criminal proceeding, when such proceeding has been commenced there cannot be an appeal to this Court by reason of sect. 47 of the Judicature Act, 1873. The distinction has, in my opinion, been drawn by Cotton, L.J. in *Reg. v. Barnardo* (*ubi sup.*), where he said: "The question is, whether the order appealed from was made 'in any criminal cause or matter' within sect. 47. Sect. 47 does not mean that no appeal shall lie when the act which originates the proceeding in which the order was made is a crime, but it means that no appeal shall lie when the cause or matter in which the order was made is in the nature of a criminal proceeding. In *Ex parte Bell-Cox* (58 L. T. Rep. 323; 20 Q. B. Div. 1) it was held that an appeal lay from the granting of a *habeas corpus*, because the proceeding in which it was granted was a civil proceeding. In *Ex parte Alice Woodhall* (59 L. T. Rep. 841; 20 Q. B. Div. 832) it was held that the refusal of a *habeas corpus* could not be appealed from because the refusal was in a criminal proceeding. This shows the distinction. In my opinion, the question is not whether the act which is said to have been done by Dr. Barnardo was one for which he was liable to be indicted but whether the proceeding in which the order was made was a 'criminal cause or matter.'" I think that that is the true distinction. It does not matter whether nonpayment of the poor rate is or is not a criminal act. If the proceeding to be taken is a criminal proceeding, then no appeal will lie to this Court in that proceeding. That is well settled law according to the decisions, and I do not object to that rule. There is no appeal to this Court in "any criminal cause or matter." It does not matter what is the obligation sought to be enforced, but only whether the proceeding is a "criminal cause or matter." In the present case the proceeding is a proceeding in a "criminal cause or matter," and therefore there cannot be an appeal to this Court in that criminal proceeding. The preliminary objection must prevail, and the appeal must be dismissed.

SMITH, L.J.—I am of the same opinion. If this is a "criminal cause or matter" there is no right of appeal. The question, then,

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is whether this proceeding is a "criminal cause or matter." This is an attempt to appeal from the decision of the Queen's Bench Division upon a case stated by justices under the Summary Jurisdiction Act, 1879, and under 20 & 21 Vict. c. 43, s. 2. A rate was made upon a person who refused to pay. Proceedings were taken before justices under the local Act, 5 Geo. 4, c. cxxvi., to enforce payment. The justices were asked to issue a distress warrant upon the goods of the person who would not pay the rate. If, after issue of the distress-warrant, that person still did not pay, and there was no sufficient distress, the justices would have been asked to send him to prison and would have done so. The question then arises whether the justices had a criminal cause or matter before them. It has been pointed out that the rate might have been objected to in a civil proceeding at the quarter sessions. The question now is whether a criminal proceeding was going on before the justices in which this case has been stated. I think that the issue of a distress-warrant need not be, *per se*, a criminal proceeding. But when that proceeding may end in a committal to prison by the justices it is, in my opinion, a criminal proceeding. It has been argued that the decided cases, from *Mellor v. Denham* (*ubi sup.*) down to the present time, have decided that, if the original matter might be either civil or criminal, then the question is material whether imprisonment might follow; but that in this case the original cause of complaint was not a criminal matter, and that the proceeding to enforce payment is not a criminal proceeding. I do not agree with that argument. In *Mellor v. Denham* (*ubi sup.*) it was held that a proceeding against a parent for not sending his child to school was a criminal proceeding. The father in that case was not a criminal. But, because the penalty was to be summarily recovered under Jervis's Act (11 & 12 Vict. c. 43), and because the person liable could be sent to gaol if the penalty were not paid, the proceeding was held to be a criminal proceeding, and an appeal would not lie to this Court. The cases before that decision were dissimilar: (*Reg. v. Steel*, 35 L. T. Rep. 534; 2 Q. B. Div. 37; *Reg. v. Fletcher*, 35 L. T. Rep. 538; 2 Q. B. Div. 43; and *Blake v. Beech*, 36 L. T. Rep. 723; 2 Ex. Div. 335). In *Mellor v. Denham* (*ubi sup.*) it was attempted to say that it was not a criminal matter at all, but it was held that, because a criminal proceeding was given by statute, the matter was therefore a "criminal cause or matter." From that time, in *Reg. v. Whitchurch* (*ubi sup.*), *Ex parte Schofield* (*ubi sup.*) *Payne v. Wright* (*ubi sup.*), and other cases, this Court has always considered whether, in the result, a committal to prison may follow. If that may be the result, it has always been held that the proceeding is a "criminal cause or matter," and that no appeal lies to this Court. As to the case of *Reg. v. Masters* (*ubi sup.*), the Court did hold that non-payment by an overseer of a balance found to be due from him was not an offence, though the amount was recoverable under 4 & 5 Will. 4, c. 76, s. 99, which

provided that a distress warrant might issue, and that in default of distress there might be a committal to prison. In my opinion that case is in antagonism to the whole series of cases in this Court. If it were necessary, I should consider whether it could be followed. It is not, however, necessary, for we have overwhelming authority in this Court that, if imprisonment may follow, then the proceeding is a "criminal cause or matter." This case is, in my opinion, clearly within sect. 47 of the Judicature Act, 1873, and the preliminary objection must succeed. The appeal, therefore, fails, and must be dismissed.

*Appeal dismissed.*

Solicitors for the appellant, *Underwood, Son, and Piper.*

Solicitor for the respondent, *J. Hortin.*

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## QUEEN'S BENCH DIVISION.

*June 27 and Aug. 5, 1896.*

(Before Lord RUSSELL, C.J.)

JONES v. GERMAN. (a)

*Justices — Jurisdiction — Search-warrant — Information — Sufficiency of—Necessity of specifying goods in warrant.*

*To justify a magistrate in granting a search warrant to search for stolen goods the information before him need not allege that the goods have been actually stolen, but is sufficient if it can be fairly understood as alleging reasonable grounds for suspecting that the goods have been stolen; and such search-warrant need not specify the goods for which search is desired.*

**F**URTHER CONSIDERATION by Lord Russell, C.J. in an action tried before him with a jury.

The facts, as stated in the judgment, were as follows:—

The action was an action for illegal arrest, false imprisonment, and trespass to goods.

The plaintiff was, at the times material in the action, employed as butler and bailiff to one Thomas Wood, at Brasted, in Kent; and the defendant is a justice of the peace for the county of Kent.

(a) Reported by W. W. ORR, Esq., Barrister-at-Law.

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On the 8th day of June, 1895, Thomas Wood swore an information before the defendant that "he hath just and reasonable cause to suspect, and doth suspect, that William Jones of Brasted has in his possession certain property belonging to the said Thomas Wood, who upon his oath does depose and say that the said William Jones has been in his employ for five years, and is now under notice to quit, and that he has requested the said William Jones to allow him to search several boxes which the said William Jones has had packed ready to be taken away, but which he refused to be looked through."

On the same day the defendant granted a search-warrant for the said goods, authorising the constable of the parish of Seven-oaks, in the following terms :

With proper assistance to enter the said premises occupied by the said William Jones, in the day-time, and there diligently search for the said goods, and if the same, or any part thereof, shall be found upon such search, that you bring the goods so found, and also the body of the said William Jones, before me, or some other of Her Majesty's justices of the peace in and for the said county of Kent, to be disposed of and dealt with according to law.

In pursuance of the warrant a search for the property of Thomas Wood was made in the presence of the plaintiff and Thomas Wood, and Thomas Wood then identified and claimed as his property certain articles, all of which articles were found packed in the boxes of the plaintiff, and the plaintiff was thereupon charged by Thomas Wood with stealing them and taken into custody.

Subsequently the plaintiff was in due course of law charged before the defendant with stealing the said goods, and was committed for trial at the quarter sessions, and the grand jury returned a true bill.

Subsequently it was agreed between the plaintiff and Thomas Wood that, in consideration of Thomas Wood not offering any evidence against the plaintiff, certain of the articles should be given up to Thomas Wood, and that the plaintiff would take no proceedings for false imprisonment, or malicious prosecution, against Thomas Wood.

In pursuance of the terms of this agreement no evidence was offered on the part of the prosecution, and a verdict of not guilty was returned.

The plaintiff then brought the present action against the defendant, alleging that the warrant was granted illegally and without jurisdiction, because the information did not charge the commission of any criminal offence, and did not specify the goods for which search was desired.

The jury assessed the plaintiff's damages at 15*l.*, if the defendant was liable only in respect of the search, and at 75*l.* if he was liable for the arrest and imprisonment until committed for trial—subject, however, to the question which was subsequently argued before the learned judge, whether the defendant was liable at all.

*Lawson Walton*, Q.C. and *A. E. Gill* for the plaintiff.—The plaintiff is entitled to recover on two grounds: first, that the information upon which the search-warrant was granted did not contain a positive statement upon oath that a felony had been committed in respect of the goods, and, secondly, that the search-warrant was a general warrant, and did not specify the particular goods in respect of which it was granted. The information merely states that the deponent has just and reasonable cause to suspect that the plaintiff had in his possession certain property belonging to the deponent, but it does not state that that property had been stolen. The real purport of the information was to obtain evidence of a felony committed, but that is not sufficient to justify the magistrate in issuing a warrant. The authorities show that there must be an allegation of fact either expressed or implied, before the magistrate, that some property had been stolen (2 Hale's Pleas of the Crown, 149, 150, where it is said that a search-warrant is not to be granted without oath of a felony committed); but there is no such allegation of fact here, either expressed or implied; and it would not be a fair construction of this information to say that Mr. Wood accepted the responsibility of making any such statement that his goods had been stolen. In Burn's Justice of the Peace, vol. 5, p. 1179, it is said, as to the granting of search-warrants: "In the case of a complaint and oath made of goods stolen, and that the party suspects that goods are in such house, and shows the cause of his suspicion, the justice of the peace may grant a warrant to search in those suspected places mentioned in his warrant, &c." So Abbott, C.J. in *Elsee v. Smith* (1 D. & R. 97), says: "I am of opinion that upon a representation to the magistrate that a person has reason to suspect that his property has been stolen, or is concealed in a certain place, the magistrate may lawfully issue his warrant to search the place." That case, therefore, which is still the law, shows that there must be at all events a statement of the suspicion that goods have been stolen, and it shows also that the requisites there laid down have not been complied with here. The same principle is borne out by *Caudle v. Seymour* (1 Q. B. 889); *Entick v. Carrington* (19 Howell's State Trials, 1029, at p. 1067, where the case of searching for stolen goods is dealt with); and by other authorities. By sect. 2 of 22 Geo. 3, c. 58, a justice was empowered to grant search-warrants to discover stolen goods, "upon complaint made before him on oath that there is reason to suspect that stolen goods are knowingly concealed in any dwelling-house, &c.;" and now by sect. 103 of the Larceny Act, 1861, "if any credible witness shall prove upon oath before a justice of the peace a reasonable cause to suspect that any person has in his possession or on his premises any property whatsoever on or with respect to which any offence . . . shall have been committed, the justices may grant a warrant to search for such property, as in the case of stolen goods." The earliest form of a search-warrant we can

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find is given in Burn's Justice of the Peace (17th edit. 1793, vol. 4, p. 146). That was after the 22 Geo. 3, c. 58, but before the Act of 1861. The forms and the authorities bear out that the information must allege (1) that certain goods had been lost; (2) that in the belief of the party deposing the lost goods had been the subject of felony; (3) that the goods were in the house of a certain specified person, and that they were concealed in that house. As to the second objection, anything more general than this warrant is it is impossible to conceive; and, as there cannot be a general warrant as to the person, so there is not a single authority for the proposition that you can have a search-warrant which is general as to goods; that is, as to goods which the deponent cannot describe, but which he says may be in the possession of a third person, so that the whole of the goods of the suspected person may be ransacked to find out if there be amongst them any goods of the deponent: (*Entick v. Carrington* (*ubi sup.*); *Wilkes v. Wood*, 19 Howell's State Trials, 1153.)

*Carson*, Q.C. and *Hohler* for the defendant.—It is conceded that, on the authorities, the validity of this warrant must depend on whether by a reasonable intendment you can find in the information a statement of the suspicion of the charge: (*Cave v. Mountain*, 1 M. & G. 257). If so, there is sufficient to relieve the defendant in this case. The warrant is good if it states the suspicion of an offence within the Act; in other words, if the magistrate might draw the conclusion that there was a suspicion in the mind of the deponent that a felony had been committed. We draw attention to sect. 67 of the Larceny Act, 1861, which deals with larceny by servants, and it seems clear that the charge brought against the plaintiff was in relation to his character of servant. Then, coming to the information, there is a clear statement of the suspicion in the mind of the deponent, and that is sufficient under sect. 103 of the Larceny Act, 1861; and if the allegation, when averred as a matter of fact, would be sufficient, then the statement of the suspicion is also sufficient within the authorities. Abbott, C.J. says, in *Elsee v. Smith* (*ubi sup.*), that "upon a representation to a magistrate that a person has reason to suspect that his property has been stolen, or is concealed in a certain place, the magistrate may lawfully issue his warrant to search the place, and *Cave v. Mountain* (*ubi sup.*) is to the same effect. *Cave v. Mountain* (*ubi sup.*) has never been questioned, and it has been referred to with approval in the Irish case of *Lawrenson v. Hill* (10 Ir. C. L. Rep. 177), 1860, where the whole matter was very fully discussed. Upon the face of this information quite sufficient is averred to justify the magistrate in coming to the conclusion that the goods of the deponent had been stolen. As to the warrant itself it is not necessary to state the specific goods in respect of which the warrant is issued, and no authority can be cited to show that it is necessary. The forms that have been cited from Burn and other books are no doubt the complete forms, but that does not mean that other forms



may not be used; and there is a form in Dalton's Justice of the Peace (edit. of 1727), p. 597, which bears out this view. The latter part of the warrant must be looked upon as a warrant for securing the appearance of the party before the magistrate, within the meaning of sect. 2 of the Justices Protection Act, 1848 (11 & 12 Vict. c. 44), which says that no action shall be brought against the justice in the case of a warrant "which shall have been issued by such justice to procure the appearance of such party, and which shall have been followed by a conviction or order in the same matter, until such conviction or order shall have been quashed." The appearance of the accused before the magistrate in this case was followed by an order sending him forward for trial, and no action will lie, as this order has not been quashed. This matter was discussed in the Irish case of *McDonald v. Bulwer* (13 Ir. C. L. Rep. 549), 1862, where it was held that no action was maintainable against a justice in respect of what was done under a warrant for procuring the attendance of the plaintiff at the petty sessions until certain subsequent orders had been quashed. We submit that the action is not maintainable against the defendant at all; but, even if he is liable, he is not liable beyond the 15*l*. They also referred to *Holroyd v. Breare* (2 B. & Ad. 473); *Ratt v. Parkinson* (20 L. J. 208, M. C.); *Lucas v. Mason* (33 L. T. Rep. 13; L. Rep. 10 Eq. 251).

*Lawson Walton*, Q.C. in reply.—With regard to the point raised under sect. 2 of the Justices' Protection Act, 1848, it is said that this action is not maintainable until some order is quashed, and reliance is placed on that section. If the prosecution of the plaintiff had resulted in a conviction, it would have been necessary to quash the conviction before bringing an action; but the prosecution resulted in an acquittal, and there is therefore no order to be quashed. The only order here was the warrant, and it is not suggested that a search-warrant can be quashed. The order of committal cannot be said to be an order within the section. A form of warrant of commitment is given in 11 & 12 Vict. c. 42, schedule, form T. 1; then we have in the schedule to the Summary Jurisdiction Act, 1879, a form of commitment on an order in the first instance (No. 34), which shows that a warrant of commitment is not an "order" within sect. 2. [Lord Russell, C.J.—Is there any case to show that an order for committal can be quashed?] None; but in *Reg. v. The Justices of Roscommon* (1894) 2 I. R. 158, it was held that a decision of justices committing a defendant for trial cannot be brought up by *certiorari*. In these Summary Jurisdiction Acts "order" is correlative to "complaint," and proceeds from a complaint, but cannot refer to a committal for trial (sects. 1 and 18 of the Summary Jurisdiction Act, 1848). "Conviction or order" in sect. 2 means a conviction or order determining the subject-matter of the complaint, and a warrant of this kind would not fall within the meaning or mischief of the Act.

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Aug. 5.—Lord RUSSELL, C.J. read the following judgment.—  
[His Lordship stated the facts as above set out, and proceeded:]  
I will deal with these two objections in the above-mentioned order. Now, it seems clear that at common law a justice has the general power to issue a search-warrant for stolen goods (see 2 Hale's Pleas of the Crown, 113, 149, 150; *Entick v. Carrington*, 19 Howell's State Trials, at p. 1067; Burn's Justice of the Peace, vol. 5, p. 1180), and although the earlier authorities are not clear on the subject it was expressly decided by a strong Court in *Elsee v. Smith* (1 D. & R. 97) that an allegation of the actual commission of a felony is not necessary to justify a magistrate in granting a distress warrant. Abbott, C.J., in giving judgment in that case, said: "It need not be a positive and direct averment upon oath that the goods are stolen, in order to justify the magistrate in granting his warrant. There are many cases in which a cautious man might not choose to swear that his property is stolen, nevertheless he might have great reason to suspect a particular party, and the magistrate would be well warranted in granting his search-warrant. Suppose the case of a horse, which has been lost by its owner, and it is found in the possession of another person, the owner in that case might not like to take upon himself to swear that the horse had been stolen, for it may have strayed; but when he finds his horse is concealed in the stable of another person, he may very naturally conclude that it must be stolen, from the circumstance of the concealment; and therefore he may very conscientiously swear that he suspects it to have been stolen. If, under such circumstances, the magistrate is not authorised in issuing his search-warrant, it might happen in many cases that felonies would go undetected." It seems to me, therefore, that on this part of the case the question is, whether the information can be fairly understood as alleging reasonable grounds for suspecting that the goods were being feloniously dealt with by the defendant. I think it can. Supposing (to take the illustration put by the defendant's learned counsel) the same language to be the subject of an action of libel, with the innuendo suggested, it would be, in my judgment, wrong to rule that the words complained of were not capable of bearing that innuendo. But it is said that this warrant is granted under sect. 103 of 24 & 25 Vict. c. 96, which says: "If any credible witness shall prove upon oath before a justice of the peace a reasonable cause to suspect that any person has in his possession or on his premises any property whatsoever on or with respect to which any offence punishable either upon indictment or upon summary conviction by virtue of this Act shall have been committed, the justice may grant a warrant to search for such property as in the case of stolen goods." I greatly doubt whether this section applies to stolen goods, and at any rate, I do not think it was meant to alter the law in respect of search-warrants for goods supposed to be stolen. The language of the

section suggests to my mind that its object is to apply the practice as regards search-warrants for stolen goods to goods in respect to which some offence under the Act (other than larceny) has been committed. The conclusion, therefore, that I have come to on this point is that, on the authority of *Elsee v. Smith* (*ubi sup.*) the information was good at common law, and was sufficient to justify the warrant. The second objection taken is, that the information should have specified the goods for which search was desired, and that the warrant was a general warrant because it did not specify the goods, and that it was therefore bad. As to this I cannot find it anywhere laid down that a search-warrant must specify the goods, and indeed it is easy to suggest many cases where it might be impossible for the person laying the information to do so. Probably, in most cases, there is no difficulty in the matter, and for that reason the usual forms for the information and the warrant are drawn up in that way. I think, therefore, both objections fail, and my judgment is for the defendant.

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*Judgment for defendant.*

Solicitors for the plaintiff, *Everett and Hodgkinson*.

Solicitors for the defendant, *Routh, Stacey, and Castle*, for *Knocker, Knocker, and Holcroft*, Sevenoaks.

## QUEEN'S BENCH DIVISION.

*Monday, June 22, 1896.*

(Before CAVE and WILLS, JJ.)

GODFREY (app.) v. RADFORD (resp.). (a)

*Weights and measures—Sale of coal—Weight ticket—Delivery of total quantity expressed in ticket—Weights and Measures Act 1889 (52 & 53 Vict. c. 21) s. 21.*

*A quantity of coal exceeding two hundredweight was in course of being delivered from a vehicle to a purchaser, and the ticket delivered therewith expressed that the purchaser would receive two tons of coal in twenty sacks each containing 2cwt. When eleven of the sacks had been delivered the remaining sacks were*

(a) Reported by W. W. ORR, Esq., Barrister-at-Law.

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coal—Weight  
ticket—Total  
weight and  
weight in each  
sack stated—  
Total  
quantity  
delivered—  
Deficiency in  
some, surplus  
in other sacks  
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*weighed, and some were found to contain less and some more than 2cwts. each, but the deficiency in those weighed exceeded the excess. The magistrate found as a matter of fact that the whole quantity of two tons was delivered :*

*Held, that, as the whole quantity expressed in the ticket had in fact been delivered, the seller could not, by reason of some of the sacks containing less than 2cwt. each, be convicted under sect. 21 of the Weights and Measures Act, 1889, of having delivered a less quantity of coal than the quantity expressed in the ticket.*

CASE stated by Mr. Fenwick, metropolitan police magistrate sitting at Southwark Police-court.

On the 11th day of Feb., 1896, a complaint was preferred by the appellant, on behalf of the London County Council, against W. W. Radford (the respondent), trading as D. Radford and Co., for that on the 22nd day of January, 1896, a quantity of coal exceeding 2cwts. was delivered by means of a vehicle to a purchaser at Hill-street, Friar-street, in the parish of St. George the-Martyr, Southwark, and that the quantity so delivered was less than the quantity expressed in the ticket or note delivered therewith, whereby he (the seller) became liable to the penalty in such case provided by sect. 21 of the Weights and Measures Act, 1889 (52 & 53 Vict. c. 21).

Upon the hearing of the complaint the following facts were proved :

(a) On the 22nd day of January, 1896, a quantity of steam coal, the property of the respondent exceeding 2cwt. was in course of being delivered from a vehicle at the premises of the purchasers of the same.

(b) In accordance with the provisions of sect. 21 of the Act, the respondent at or before the delivery of the coal had duly delivered or caused to be delivered to the purchasers a ticket or note according to the form in the third schedule to the Act. The ticket or note was in the following form :

Messrs. C. Rice and Co., Friar-street.—Take notice that you are to receive here-with two tons of small coals in twenty sacks each containing 2cwts.—Jan. 22, 1896.—D. RADFORD and Co., Sellers.

(c) When eleven out of the twenty sacks had been duly delivered to the purchasers one of the London County Council coal officers appeared and weighed the remaining nine sacks. The officer found seven of the nine sacks to be deficient in weight, the total deficiency being 80lb. Each of the two remaining sacks contained 10lb. overweight, and thus the general deficiency in weight upon the nine sacks was 60lb.

(d) After the officer had weighed the nine sacks and had communicated the result to the purchasers, the purchasers gave the respondent a receipt for two tons of coal. The appellant did not satisfy the learned magistrate that the total quantity of coal delivered was other than that mentioned in the ticket or note,

namely, two tons, and the magistrate found as a fact two tons were delivered.

The appellant's contention was that the words "each containing 2cwts." were a necessary part of the ticket or note, having regard to the form of the ticket or note set out in the third schedule, and that it was sufficient, in order to establish an offence under sect. 21, to prove that some of the sacks had been weighed and found to contain a less quantity than that represented in the ticket or note, namely, 2cwts. each.

The respondent's contention was that the words "each containing 2cwts." in the ticket or note were mere surplusage, and need not have been inserted, and that although a certain number of the sacks contained less than 2cwts. each, yet, as it had not been proved that the total quantity in fact delivered in the twenty sacks was less than two tons, no offence under sect. 21 had been committed.

The magistrate decided that no offence under sect. 21 had been committed, and he stated that in his opinion that section contemplated two modes of delivery (1) in bulk, which necessitates the ascertainment of the tare weight of the vehicle; (2) otherwise than in bulk, and in that case the form in the schedule indicates that the weight of each sack of coal must be stated, as well as the aggregate weight of the several sacks; but he held that if the aggregate weight be correctly stated, as it was in this case, the respondent could not properly be convicted under sect. 21 of having delivered a less quantity of coal than the quantity expressed in the ticket or note.

The magistrate also stated that he did not agree with the respondent's contention that the statement in the ticket or note as to the weight of each individual sack was mere surplusage, but that, on the contrary, he was of opinion that if proceedings had been taken under sect. 29, for selling coal of less weight than that represented by the seller, possibly the respondent might have been convicted, as under that section the coal officer may weigh any sack of coal in course of delivery, and if the weight prove to be less than that represented an offence is committed. He also stated that, in dealing with a complaint under sect. 21, the coal must either be treated as a whole, or each sack separately treated; if the former method be adopted, in this case the weight was correct; if the latter, the sack does not purport to contain more than 2cwts., and sect. 21 only applies "where any quantity of coal exceeding 2cwt. is delivered."

The question for the opinion of the Court was whether, upon the facts above stated, the decision of the learned magistrate was right in law.

Sect. 21 of the Weights and Measures Act, 1889 (52 & 53 Vict. c. 21) provides:

(1.) Where any quantity of coal exceeding two hundredweight is delivered by means of any vehicle to a purchaser, the seller of the coal shall therewith deliver, or

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*Weights and Measures Act, 1889—Sale of coal—Weight ticket—Total weight and weight in each sack stated—Total quantity delivered—Deficiency in some, surplus in other sacks—52 & 53 Vict. c. 21, s. 21.*

cause to be delivered, or to be sent by post or otherwise, to the purchaser or to his servant, before any part of the coal is unloaded, a ticket or note according to the form in the third schedule to this Act, or according to a form to the like effect.

(2.) If default is made in complying with the requirements of this section with respect to the delivery or sending of a ticket or note, or if the quantity of coal delivered is less than the quantity expressed in the ticket or note, the seller of the coal shall be liable to a fine not exceeding five pounds.

The form of "Weight ticket or consignment note on delivery of coal over two hundredweight," is thus given in the third schedule :

Mr. A. B. (the name of the buyer).

Take notice that you are to receive herewith      tons,      cwts.      lb. of coal.

[when sold in sacks, add]

in      sacks, each containing      cwt.

[when sold in bulk, add]

Weight of coal and vehicle      tons,      cwts.,      lb.

Tare weight of vehicle ...      tons,      cwts.,      lb.

Net weight of coal herewith delivered to purchaser...      tons,      cwts.,      lb.

C. D. (the name of the seller).

*Horace Ivory* for the appellant.

*Spokes* for the respondent.

CAVE, J.—[His Lordship, after reading sect. 21, proceeded:] The learned magistrate found that a ticket was sent or delivered, and that ticket expressed that the purchaser would receive two tons of coal in twenty sacks of 2cwts. each; and that when some part of the coal had been delivered the remainder of the sacks were weighed. Some were found to contain 10lb. less than 2cwts. each, and some were found to contain 10lb. more than 2cwts. each, but the deficiency was greater than the excess. The magistrate, however, found as a fact that two tons of coal were delivered. The appellant's contention was that the words "each containing 2cwts." were a necessary part of the ticket or note, having regard to the form of the ticket or note set out in the third schedule, and that it was sufficient in order to establish an offence under sect. 21, to prove that some of the sacks had been weighed and found to contain a less quantity than that represented on the ticket or note, namely, 2cwts. each; the allegation being that a quantity of coal exceeding 2cwts. was delivered by means of a vehicle, and the quantity so delivered, that is, a quantity exceeding 2cwts., was less than the quantity expressed on the ticket or note delivered therewith. The magistrate has found as a fact upon the evidence which I presume satisfied him, that the amount delivered was not less than the quantity purported on the note to be delivered, and the contention appears to have been that there was a separate representation with regard to each sack that each sack contained 2cwts. The first difficulty in the way of that contention is that the section only applies to the sale of coal "exceeding 2cwts.," and if you treat this as a sale of the whole, and at the same time as a separate sale of each of the sacks—which does not seem possible—yet that there would be less than 2cwts. delivered in the case of some of the sacks, in which case the section would

not apply. As I have said, even that contention, which I do not think is the correct view of the statute, leaves open the objection that it makes what was one sale of two tons into twenty separate sales of 2cwts. each, and that, if that is so, as the sale in each separate case does not exceed 2cwt. it does not come within the section at all. It is quite obvious to my mind that the sale was one sale of two tons, and I think, as the learned magistrate has found as a fact that two tons were delivered, he has stated the appellant out of Court, and therefore there is an end of the matter. It seems to me, therefore, that the appeal must be dismissed.

WILLS, J.—I am of the same opinion.

*Appeal dismissed.*

Solicitor for the appellant, *W. A. Blaxland.*

Solicitors for the respondent, *Radford and Frankland.*

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## QUEEN'S BENCH DIVISION.

*Wednesday, Oct. 28, 1896.*

(Before GRANTHAM and KENNEDY, JJ.)

BRIDGE (app.) v. HOWARD (resp.). (a)

*Adulteration — Food and drugs — Sufficiency of certificate — Grounds of opinion set out—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), ss. 6, 13, 18, 20, and 21.*

*A certificate to be admissible in evidence under sect. 21 of the Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), in a prosecution for adulteration under that Act, need not set out all the ingredients found by the certifier in the sample analysed by him, provided it shows the ground on which he came to the conclusion that there was a foreign ingredient in the same.*

*A sample of milk sold by A. was submitted to B. for analysis in accordance with the Act. B. certified that 94 per cent. of the same was milk, and 6 per cent. added water. He stated as his reason for this conclusion that he had found only 7.97 per cent. of solids not fat in the same, while genuine milk should have 8.5 per cent.*

(a) Reported by J. ANDREW STRAHAN, Esq., Barrister-at-Law.



BRIDGE *Held, that the certificate was sufficient, and was admissible in*  
*v.*  
 HOWARD. *evidence.*  
 Fortune v. Hanson (74 L. T. Rep. 145; (1896) 1 Q. B. 203)  
 1896. *distinguished.*

*Sale of Food  
 and Drugs  
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 certificate—  
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 ss. 6, 13, 18,  
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**A**PPEAL by special case from the decision of justices dismissing a summons under sect. 6 of the Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63).

The appellant was an inspector appointed by the County Council of Middlesex. He procured a sample of milk sold by the respondent and submitted the same to be analysed by the analyst of the Middlesex County Council. The analyst analysed the sample, and gave a certificate in the following terms :

I, the undersigned, public analyst for the county of Middlesex, do hereby certify that I received on the 26th March, 1896, a sample of new milk (E. M. 159) for analysis (which weighed 6oz.), and have analysed the same, and declare the result of my analysis to be as follows: I am of opinion that it contains the parts as under—Milk, 94 per cent.; added water, 6 per cent. This opinion is based on the fact that the sample contained 7·97 per cent. solids not fat, whereas genuine milk contains not less than 8·5 per cent. solids not fat. The samples had undergone no change which would interfere with the analysis.

The inspector then laid an information charging that the respondent sold to the prejudice of the purchaser an article of food, to wit, milk, which was not of the nature, substance, and quality of the article demanded by such customer, contrary to the provisions of sect. 6 of the Sale of Food and Drugs Act, 1875.

At the hearing of the information the certificate above set out was put in as evidence of the offence charged. Objection was taken on behalf of the respondent that it was bad and inadmissible as evidence under the Sale of Food and Drugs Act, 1875, on the ground that it did not state sufficiently the various ingredients found by the analyst, and the case of *Fortune v. Hanson* (74 L. T. Rep. 145; (1896) 1 Q. B. 203) was cited in support of this objection. The appellant thereupon offered the analyst as a witness to explain the certificate. The justices refused to hear his evidence. They held the certificate bad on the objection raised and dismissed the summons.

The inspector appealed.

The Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63) enacts :

Sect. 6. No person shall sell to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser under a penalty not exceeding twenty pounds.

Sect. 13. Any medical officer of health, inspector of nuisances, inspector of weights and measures, or inspector of a market . . . may procure any sample of food or drugs, and if he suspect the same to have been sold to him contrary to any provision of this Act, shall submit the same to be analysed by the analyst of the district or place for which he acts . . . and such analyst shall . . . with all convenient speed analyse the same and give a certificate to such officer wherein he shall specify the result of the analysis.

Sect. 18. The certificate of the analysis shall be in the form set forth in the schedule hereto, or to the like effect.

Sect. 20. When the analyst having analysed any article shall have given his certificate of the result, from which it may appear that an offence against some one

of the provisions of this Act has been committed, the person causing the analysis to be made may take proceedings for the recovery of the penalty herein imposed for such offence, before justices in petty sessions assembled having jurisdiction in the place where the article or drug sold was actually delivered to the purchaser, in a summary manner.

Sect. 21. At the hearing of the information in such proceeding the production of the certificate of the analyst shall be sufficient evidence of the facts therein stated, unless the defendant shall require that the analyst shall be called as a witness. . . .

#### Form of certificate given in the schedule of the Act.

To . . . —I, the undersigned, public analyst for the . . . , do hereby certify that I received on the . . . day of . . . , 18 . . . , from . . . a sample of . . . for analysis (which weighed . . . ), and have analysed the same, and declare the result of the analysis to be as follows:—I am of opinion that the same is a sample of genuine . . . or, I am of opinion that the said sample contained the parts as under, or the percentages of foreign ingredients as under.—Observations: . . . —As witness my hand this . . . day of . . . , . . . —A. B., at . . .

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*Earle* for the appellant.—The decision of the justices was based on a misapprehension of the grounds of the judgment in *Fortune v. Hanson* (*ubi sup.*). The certificate there was in these terms: "I am of opinion that the said sample contained the percentage of foreign ingredients as under: 5 per cent. of added water to the prejudice of the purchaser." This was merely a statement of the analyst's opinion. No grounds were given for it, nor was the mode by which he arrived at it indicated. All that *Fortune v. Hanson* decided was, that such a statement of opinion was not sufficient. It was held there that the analyst must not decide the whole matter for himself; he must give the materials on which his conclusion is founded, so that the magistrates may be able to see if these justify his conclusion. Here the analyst does this. He sets out as the ground of his opinion that only 7.97 per cent. of the sample consisted of solids not fat, and as the normal percentage of such solids found in genuine milk is 8.5, he draws the conclusion that at least 3 per cent. of the sample must be an added ingredient not containing such solids, and as no absolutely foreign matter was found in the sample, he concludes that the added ingredient must have been water. The justices seem to have thought that the decision of *Fortune v. Hanson* was to the effect that all the ingredients found in the milk by the analyst, and especially the percentage of water should be set out; but this is wrong. As a matter of fact, the percentage of water is in itself a most uncertain and misleading test as to the genuineness or otherwise of milk. The percentage of water is often greater in genuine milk of poor quality than in richer milk to which water has been added to a considerable extent. On the other hand, whatever the quality of the milk the percentage of solids not fat is fairly constant, and accordingly it supplies the best test for deciding whether the milk is genuine, or has a foreign ingredient added. In *Fortune v. Hanson* it was assumed that the percentage of water is the reason why such stress is laid on failure of the analyst to set it out in the certificate. As to the justice's refusal to hear the analysts evidence, I do not contend that the prosecutor was entitled to

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tender him to supply evidence to complete an imperfect certificate. All that he was tendered as a witness for, was merely to explain his certificate. The justices seemed to be of opinion that no one was entitled to call him for any purpose except the defendant.

The respondent did not appear.

GRANTHAM, J.—I am of opinion that the magistrates were wrong in rejecting the certificate. I do not wish to discuss *Fortune v. Hanson*, and for the decision of this case it is not necessary to do so. What we have to decide is whether the analyst has set out the facts sufficiently in the certificate, and I have no doubt he has. The objection was that he had not set out all the ingredients he found, and particularly the percentage of water. Now those who know anything about these things know this—that the amount of water in genuine milk varies enormously, being often a higher percentage in genuine milk of pure quality than in richer milk to which water has been added. Where water has been added it is a foreign ingredient, whether the percentage in the milk still is below the average in genuine milk or not. The analyst here, knowing the uncertainty of the water test, has taken another. He sets out the proportion of solids not fat which he found in the sample—and a proportion which is fairly constant in all genuine milk—and he draws from it the conclusion that a certain percentage of water must have been added. He not merely then gives his opinion, but sets out the mode by which he arrived at it. As a matter of fact he rather understates than overstates the proportion of water in the sample. This, however, can hardly be considered to prejudice the respondent. I think the case must be remitted to the justices.

KENNEDY, J.—I am of the same opinion. As one of the judges who decided *Fortune v. Hanson* I would like to say a few words as to that case. Whether the decision in it was right or wrong, it binds us, and we must decide this case in accordance with it. I still have no doubt it was decided rightly. The decision, as Mr. Earle said, went on the ground that the certificate of the analyst should not merely state the conclusion at which he had arrived, but also the grounds on which he had arrived at it. All that the certificate there said was that in the analyst's opinion a certain percentage of water had been added to the genuine milk. That was plainly merely his opinion, and he did not intimate how he arrived at it. We held that the object of the certificate was to give the other side notice of the charge they were to meet and the grounds of the charge—that is the scientific method by which it was proved. The schedule to the act sets out two forms of certificate. [Reads forms.] I am still of opinion that the fairest method of certifying is by setting out the various ingredients found in the milk, and their percentage to the whole. But the Act gives no alternative. The certificate in *Fortune v. Hanson* satisfied neither of these. Water is a natural ingredient in all milk; and to say that there was found

so much added water gives no evidence of the existence in the milk of a foreign ingredient unless the total proportion of water found is stated. But here the analyst has not merely stated that he has found so much added water; he has gone on to give all parties the scientific basis of this statement. This in the language used in *Fortune v. Hanson* is giving to the justices the materials needed for deciding the point for themselves. Here the percentage of solids not fat is given as ground for his conclusion. That is sufficient to take the case out of *Fortune v. Hanson*.

Case remitted.

Solicitor for the appellant, Sir R. Nicholson.

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## COURT OF APPEAL.

Nov. 3, 5, and 14, 1896.

(Before LINDLEY and SMITH, L.JJ.)

REG. v. LORD LEIGH AND OTHERS, THE STANDING JOINT COMMITTEE FOR THE COUNTY OF WARWICK; *Re* KINCHANT. (a)

APPEAL FROM THE QUEEN'S BENCH DIVISION.

*Police—Pension—Chief constable—Incapacity through infirmity—Bankruptcy—Neglect to comply with order for medical examination—Nonpayment of pension—Mandamus—Police Act, 1890 (53 & 54 Vict. c. 45); s. 1, sub-sects. (a), (b); s. 5, sub-sects. 1, 3, 4, 7; ss. 7, 12.*

*Where an order for the medical examination of a pensioner, under sect. 5 of the Police Act, 1890, is made by a police authority not really for the purpose of examining him as to the state of his health to satisfy them that his incapacity continues, but with some collateral object, it is made without jurisdiction, and the pensioner is not bound to obey it, and a mandamus will lie against the police authority to enable the pensioner to obtain continued payment of his pension.*

*Under the Act the police authority have no power to cancel a pension without giving the pensioner the option of returning to the police force.*

*Under the Act the police authority, or the medical practitioner selected by them, have jurisdiction to prescribe the time and place for the purpose of giving effect to an order for the examination of a pensioner to satisfy them that his incapacity continues.*

*The direction as to time and place is not the substantial part of the*

(a) Reported by E. A. SCRATCHLEY, Esq. Barrister-at-Law.

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*order for examination, and if a pensioner attends for examina-  
tion, although not at the time and place indicated, he cannot be  
treated as disobeying the order.*

*Decision of the Divisional Court reversed.*

## APPLICATION for a *mandamus*.

The facts of the case appear from the judgments.

*Dickens*, Q.C. and *Atherley Jones* appeared on behalf of the appellant.

*Channell*, Q.C. and *Darlington* appeared on behalf of the respondent.

*July 25.*—The following written judgments were delivered:—

CAVE, J.—This is an application for a *mandamus* to the Standing Joint Committee of Warwickshire, being the police authority for the county, commanding them to hold a meeting to issue their requisition to the County Council of Warwickshire for the payment of 288*l.*, being the arrears of pension from the 24th day of June, 1894, to the 25th day of December, 1895, due and payable in respect of the superannuation pension of 192*l.* a year for life, granted by such standing joint committee to Robert Henry Kinchant by a resolution of the 18th day of January, 1892. The application is made by William Barker Sanderson, who claims to be entitled to the pension under and by virtue of two indentures of the 4th day of March, 1892, and the 29th day of April, 1895. On the 7th day of December, 1891, Kinchant, who was then chief constable of the county of Warwick, resigned his office on the ground of ill-health, and asked the standing joint committee for a superannuation pension. The resignation was accepted, but the question of the superannuation pension was referred back to the police sub-committee. In the same month Kinchant was adjudicated a bankrupt. On the 11th day of January, 1892, the police sub-committee reported that Kinchant was entitled under sects. 1 and 4 of the Police Act, 1890, to a life pension of 192*l.* per annum. On the 18th day of January, 1892, the standing joint committee resolved that, being satisfied that Kinchant was incapacitated by infirmity of mind and body for the performance of his duty, and that such incapacity was likely to be permanent, he had become entitled to a life pension of 192*l.* per annum. By a subsequent resolution of the same date, Capt. Brinkley was appointed chief constable in Kinchant's place. On the 4th day of March, 1892, Kinchant, who was then residing in England, assigned his pension to Mr. Griffiths, a solicitor, on trust for his (Kinchant's) wife and daughter during his and their joint lives, and subject thereto for Kinchant for his life, and Mrs. Kinchant, who was possessed of separate estate in consideration of the premises, covenanted to provide a suitable residence for and suitably clothe, feed, and maintain Kinchant during their joint lives. This assignment was made under sect. 7, sub-sect. 1 of the Act. On the 11th day of July, 1892, the standing joint



committee resolved that no further payment should be made of the superannuation pension awarded to Kinchant after the 29th day of September then next until the standing joint committee was satisfied, by the evidence of Dr. Rankin, that he was still incapacitated by infirmity for the performance of his duty, and that the trustee of Kinchant's pension should be informed of the resolution, and be required to arrange for the attendance of Kinchant before Dr. Rankin at Warwick, or at some convenient place near Warwick, on a day to be named. In the previous April Kinchant had been made a bankrupt, but had withdrawn to Portugal, and had refused to attend his public examination in bankruptcy, whereupon a warrant had been issued for his arrest, which had remained unexecuted owing to his absence abroad. On the 10th day of October, 1892, the standing joint committee ordered, by a majority, that the order of the 11th day of July requiring the attendance of Kinchant at or near Warwick to be examined by Dr. Rankin, and the certificate of Kinchant's medical adviser at Lisbon, stating his inability to travel to Warwick, and the letters of Mrs. Kinchant and Dr. Rankin confirming such inability, having been considered, the payment of Kinchant's pension coming due at Christmas then next should not be withheld in consequence of his non-attendance at or near Warwick before that day. On the 16th day of January, 1893, the joint committee resolved that, as Kinchant had failed to submit himself to examination by Dr. Rankin, his pension should be suspended from the 24th day of December then last, but that, in order to give him a further opportunity of satisfying the committee of his incapacity to serve having continued, he should be required to submit himself to Dr. Rankin for examination at or near Warwick on or before the 25th day of March then next, and that, if he failed or refused to be so examined, his pension should be cancelled, and he should be required to serve again in the force. On the 3rd day of March, 1893, Kinchant submitted himself to examination at Leamington, having travelled from Portugal for that purpose. The examination took place at night at the house of Mr. Sanderson, the present applicant, who is his solicitor, and Kinchant at once returned to Portugal to avoid arrest. On the 17th day of April, 1893, the standing joint committee declared themselves satisfied by the evidence of Dr. Rankin that Kinchant's incapacity to serve again continued, and resolved that the quarter of his pension due on the 25th day of March then last should be paid to his trustees, and that he should be required to present himself at the county police buildings in Warwick on the 12th day of June then next, for examination as to the state of his health by two medical practitioners selected by the committee, failing which his pension should be cancelled. On the 17th day of July, 1893, the joint committee resolved that, as Kinchant failed to present himself for examination on the 12th day of June, his pension should be cancelled as from that day, and he should be required to serve again in the force as required by the statute.

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On the 9th day of October, 1893, a letter from Kinchant of the 4th day of October, in reply to the requirement that he should serve again (which has not been produced before us) was read, and the standing joint committee resolved that, as he had failed or refused to comply with the requirement to serve again in the force, he was thereby dismissed. On the 16th day of April, 1894, the standing joint committee resolved that, it appearing to the committee that it was doubtful whether the order of the 17th day of April, 1893, requiring Kinchant to submit himself to a medical examination at the police office at Warwick on the 12th day of June then next between the hours of 1 and 3 p.m., and the subsequent orders founded thereon, were valid in law, the order of the 17th day of July, 1893, cancelling Kinchant's pension should be rescinded, and the arrears paid. On the 12th day of July, 1894, the standing joint committee resolved that Kinchant should attend at the chief constable's office, Warwick, on Friday, the 31st day of August, 1894, between the hours of noon and 3 p.m. for the purpose of examination as to the state of his health by two medical practitioners approved of by the standing joint committee, and that no further pension should be paid to Kinchant until the report of such examination had passed the standing joint committee, and that failing submission to such examination the pension should be cancelled. The names of the medical men selected were communicated to Kinchant by a notice of the 18th day of August, 1894, but Kinchant did not attend, alleging that he was unable by reason of illness to do so. After the 6th day of November, 1894, Kinchant was not liable to be required to serve again. On the 12th day of November, 1894, Mr. Gwynne Griffith issued a writ against the county council for 48*l.* in respect of his pension, but on the 2nd day of April, 1895, the plaintiff gave notice that he discontinued the action. Execution was issued by the county council for the amount of the taxed costs, 12*l.* 5*s.* 3*d.*, but a return of *nulla bona* was made, and these costs still remain unpaid. On the 29th day of April, 1895, William Barker Sanderson was appointed a trustee of the settlement of the 4th day of March, 1892, in place of Mr. Griffith. Kinchant, in his affidavit, states that he had always been ready and willing to be examined by some legally qualified medical practitioner resident in Lisbon; but it does not appear that Dr. Lahmeyer is a duly qualified medical practitioner, or that there is any such in Lisbon. I confess that it seems to me to be quite impossible to say, in the face of the affidavits filed by the defendants in this case, that the standing joint committee is not acting with perfect *bona fides* and honesty, and in that case (however it might have been otherwise) it is quite clear that their decision is conclusive, and that no appeal lies to this Court. It is said, however, that although their decision cannot be impugned on the merits (on which, indeed, it seems to me to be absolutely right), yet that it may be got rid of by certain reasoning which appears to me to be in the highest

degree technical, and the last which should be resorted to by this Court in order to compel the ratepayers of Warwickshire to maintain their late chief constable in open defiance of his creditors, and what is worse, of the laws of his country. It is said, in the first place, that the standing joint committee exceeded their powers in requiring Kinchant to attend at a fixed time and place. Now, if this had been the real question between the parties, there would have been something to say for it; but Kinchant has never expressed, nor does he now express, his willingness to attend at any time or place before the medical practitioners selected by the standing joint committee. The case put forward in his affidavit is that they ought to appoint some medical man at Lisbon before whom he can attend—a contention which will not hold water for a moment. I cannot altogether agree that the fact that he is defying the Court of Bankruptcy is a matter which ought to have very little to do with the determination of the standing joint committee to cancel his pension. It leads to a very natural suspicion that he is living abroad, not for reasons of health, but to avoid examination, and that ought, in my opinion, justly to make the standing joint committee suspicious of medical certificates offered under these circumstances by a gentleman they do not know and cannot question. By sect. 8 a pension of any kind under the Act becomes forfeited if the grantee is convicted of any offence for which he is sentenced to imprisonment for three months with hard labour, or for twelve months without hard labour. By the Debtors' Act, 1869, a bankrupt may be sentenced to imprisonment for two years with or without hard labour for various offences under the bankruptcy law, and it is very suspicious that the bankrupt should have left England in order to avoid his public examination in bankruptcy. A second point taken is, that the standing joint committee ought to have required Kinchant under sect. 5, sub-sect. 4, to serve again in the police force. I am by no means sure that (to use the language of sect 12) circumstances admit of this provision being applied to a chief constable who has resigned and gone to live abroad, and to whom a successor has been appointed. But if they do, it seems to me that such a contention is wholly inapplicable to this case. Kinchant has never offered, and was not in the least degree likely to offer to come back and serve in this country in the police force, as such a course would have led to his arrest and inevitable dismissal, and it seems to me to be monstrous that a decision of the justices, which is final, and cannot be impeached on the merits, should be set aside on such grounds as these. Lastly, assuming that sect. 11 does not apply (a position which I should like, however, time to consider if it were necessary to decide it), I am of opinion that in the exercise of our discretion, we ought not to grant the prerogative writ of *mandamus* in this case. Our interference is sought (for I regard this application as really made for the benefit of Kinchant) on behalf of one who is living abroad in

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open defiance of the laws of his country. Supposing we have power, as I think we have not, to disregard the order of the standing joint committee of the 12th day of July, 1894, we ought not to lend the extraordinary assistance of the law to one who is living in contempt of it. Such a proceeding would be of the very worst example to the ordinary police constable. I am of opinion that, under the circumstances of this case, the Court should not assist Kinchant to live abroad and defy his creditors at the expense of the ratepayers. For these reasons I am of opinion that the order *nisi* should be discharged with costs.

WILLS, J.—In the year 1891 one Robert Henry Kinchant was chief constable of the county of Warwick. He had then served as a chief constable more than fifteen and less than twenty-five years. Under the Police Act, 1890 (53 & 54 Vict., c. 45), s. 1, sub-sect (b), he was if incapacitated for the performance of his duty by infirmity of mind or body, entitled on a medical certificate to retire and receive a pension for life; and by sect. 5, sub-sect. 1, the police authority shall, before granting such a pension, be satisfied by the evidence of some legally qualified practitioner or practitioners selected by them that he is incapacitated by infirmity from the performance of his duty, and that the incapacity is likely to be permanent. Sect. 5 of the Police Act, 1890, sub-sect. 3, provides that, where a pension is granted on the ground of incapacity for duty, the police authority shall, yearly or otherwise, until the power under the Act of requiring the constable to serve again ceases, which would in this case be up to the 15th day of November, 1894, satisfy themselves that the incapacity continues, and unless they resolve that such evidence is unnecessary, shall satisfy themselves by the like evidence above mentioned. Sub-sect. 4 provides that, in case of the incapacity ceasing before the time at which the officer would if he had continued to serve have been entitled without a medical certificate to retire and receive a pension for life—that is, unless there is a break before twenty-five years from the commencement of the service—the police authority may cancel his pension and require him to serve again in the police force in a rank not less than the rank he held before his retirement, at a rate of pay not less than before. By sub-sect. 7, if a constable fails or refuses when required by the police authority to be examined by some legally qualified medical practitioner selected by the authority, the authority may deal with the officer in all respects as if they were satisfied by the evidence of such a practitioner that the officer is not incapacitated for the performance of his duty; and by sub-sect. 8 the decision of the police authority on the matters above-mentioned shall be final. [His Lordship stated the facts of the case, and continued:] Before discussing the effect to be given to the action of the standing joint committee, I wish to state my view of the effect of the provisions I have cited of the Act of 1890. It is the duty of the committee to satisfy themselves,

unless they consider it unnecessary, by periodical medical examination, that the incapacity continues. They may, if they deem it necessary, require such examination yearly or otherwise, which I suppose gives them power to require it as often as they think fit. If the incapacity ceases, they may cancel the pension, not simply, but must at the same time require him to serve in his old rank and at his old pay as a minimum. They may select any other medical man or medical men that they like to make the examination. If the officer fails or refuses to submit to the examination of such medical man or medical men, they may treat him as being no longer incapacitated from performance of duty; and lastly, their decision on the matters mentioned in sect. 5, which includes all the above matters, shall be final. Amongst the matters, therefore, as to which their decision is to be final is the one which is crucial in this case, namely, whether Kinchant has failed or refused to submit to examination by their selected medical men. If they can by saying that they have so decided prevent any question from being raised as to the legality of their proceedings, *cadit questio*. There is no more to be said. But I may mention that they cannot merely by passing such a resolution go beyond the powers conferred upon them by the Act, and that, if their proceedings be beyond the Act of Parliament or contrary to natural justice, it is competent for the court to treat a decision given under such circumstances as no decision. This is no new principle. Magistrates have an absolute discretion to grant or withhold licences for public-houses, but it has been held over and over again that the discretion must be judicially exercised. That which is done under such discretion "must be done according to the rules of reason and justice, not according to private opinion; according to law and not humour." I am quoting from Lord Halsbury's judgment in *Sharpe v. Wakefield* (64 L. T. Rep. 180, at p. 181; (1891) A. C. 173, at p. 179), where many illustrations of the doctrine are given. The decisions of magistrates upon questions of fact are as final in all matters which do not touch their jurisdiction as if they were made so by statute; but if it appeared on the face of an order of justices that it had been arrived at by applying in a material respect a mistaken principle of law, I apprehend there would be no difficulty in quashing their order. Local authorities have constantly by statute, or by bye-laws having the force of statutes, the duty of deciding without appeal whether they will approve or disapprove the plans of building owners. It has been held in several cases that they can do so only within the bounds of their lawful authority and discretion. In the present case every resolution which has been passed affecting the late chief constable's right to a pension, namely No. 410 of the 17th day of April, 1893, No. 438 of the 17th day of July, 1893, No. 463 of the 9th day of October, 1893, No. 538 of the 12th day of July, 1894, has been founded upon an order upon him to

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attend at Warwick upon a given day for examination, and no other ground for cancelling his pension appears in any resolution than his failure to attend at Warwick at the given hour and place. If, therefore, the Act of Parliament gives no power to make such an order his failure to comply with it gives no right to treat him as having failed or refused to submit himself to examination, and a decision that he has so failed or refused based on such grounds only is no decision at all. I do not think the Act gives any power to the police authority to make any such order. There is the widest latitude given to the authority to select their own medical men, but nothing is said about their power to require the pensioner's attendance at any given place, and I cannot think it was intended to give them such a power. If it exists in this case the police authority, say, of the London police may order the attendance of every pensioner, as to whose continued incapacity they are not satisfied, in London, though the man receiving a pension of a few shillings a week may live in Devonshire or Cumberland. This is no imaginary case. It is well known that the police forces of the large towns are largely fed by men from the country who are found to be better fitted for the work than town-bred people. If the power of selecting a particular medical man carries with it the power of compelling the pensioner to present himself at the place where that medical man lives, the police authority of a distant county might, if they thought the opinion of a London doctor desirable, compel a man to go from Cornwall to London in order to keep his pension. The man might be bed-ridden or paralysed in fact and absolutely penniless, and yet the authority might forfeit his pension because they erroneously suspected that he was shamming. It is true that the pensioner in the present case is living out of England and at a great distance from England. Cintra, however, is not an impossible place, and it has never been suggested that the standing joint committee would have any real difficulty in getting him examined there by medical men of their own selection. But whether there be such a difficulty or not, I am of opinion that the Act of Parliament does not impose upon the pensioner the necessity of living either in England or in the neighbourhood of the seat of the police authority, or of taking a long and expensive journey whenever the standing joint committee may wish to have him examined. It appears that in this case the one journey which Kinchant took to be examined cost him 25*l.*, and there seems to be no reason to doubt that he is utterly without the means of coming to London. This, however, is beside the mark. The standing joint committee either had or had not the power to compel him to travel at his own expense to Warwick for examination. If they had, they have properly determined on his failure to do so that he had within the Act failed or refused to submit himself to examination. If they had not, their decision that because he declined to come to Warwick he had failed or refused to



submit himself to examination is no decision at all, being founded upon breach of a condition which they had no right to impose. So far I have kept the case clear of an element which must not be ignored in this case, the introduction of which I regret and which in my opinion ought to have very little to do with it. I have already mentioned that Kinchant was made bankrupt in December, 1891. It appears that he underwent one public examination, and that he was ordered to attend an adjournment of the examination, and to prepare accounts. Before the day fixed for the adjourned hearing he went to Cintra. A warrant was issued for his apprehension—not for any criminal offence, but simply a warrant addressed to the officer of the Bankruptcy Court, to apprehend him for disobedience of the order of the Court. This warrant has been in force ever since. When Kinchant submitted himself, on the 3rd day of March, 1893, for examination by Dr. Rankin, he arranged time and place with Dr. Rankin (the resolution then in force not having prescribed time and place), and was examined at the house of a friend now the trustee under the settlement and the present applicant. He was examined in the evening, and went away immediately afterwards. The official receiver heard of this, and wrote to the standing joint committee complaining that he had lost the opportunity of arresting Kinchant. From that time all subsequent resolutions have prescribed time and place for the examination. One ground taken in the affidavits in support of the cause shown against the rule is, that the deponents thought it a scandal that Kinchant should be defying the law and receiving his pension. As early as December, 1892, the standing joint committee applied to the Home Office for advice, and received general advice as to their power to require an examination within the year. The letter went on to say that the opinion of the Secretary of State was not binding upon the construction of an Act of Parliament. After Kinchant had been to Leamington, the standing joint committee asked the Home Office for advice again, which was given on the 13th day of April, 1893. After referring to the warrant, and pointing out that it was not for a criminal offence, and that for disobedience of the order of the Bankruptcy Court Kinchant was not liable under sect. 8 of the Police Act, 1890, to forfeit his pension, the letter went on to advise the standing joint committee either to withhold payment of the pension (for which at that time there was no legal ground whatever) and await compulsion by a Court of law, or to require his attendance at Warwick in about a month's time for examination, and to do all in their power to assist the Bankruptcy Court to arrest him. In my opinion this was unfortunate advice, which has been too unreservedly followed. Sects. 8 and 9 of the Police Act give a number of cases in which the pension may be forfeited. This is not one of them. The standing joint committee ought not to try by an indirect process to forfeit the pension because Kinchant is avoiding arrest under the bankruptcy warrant, and as in not one

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of the documents in which the views of the standing joint committee are recorded is the ground taken except that he had failed to come to Warwick as ordered, it is plain to my mind that, whatever may have been the opinion of individual members, the action of the standing joint committee was not founded upon any conviction that he was not incapacitated. Dr. Lahmeyer had reported to Dr. Rankin, in January, 1893, that Kinchant was in an early stage of softening of the brain. He had begged Dr. Rankin to keep his information to himself, as he was anxious it should not reach Kinchant's ears, but he afterwards gave Dr. Rankin permission to mention this if necessary. Dr. Rankin, in his report to the standing joint committee, suppressed the specific name of the disorder, describing it as a very serious nerve disease; but, as the correspondence between Dr. Rankin and Dr. Lahmeyer is made an exhibit to the affidavit of the clerk of the standing joint committee, I cannot doubt that it was known to the standing joint committee that Dr. Lahmeyer considered it to be a case of softening of the brain. Dr. Lahmeyer certified on five different occasions—the 21st day of September, 1892; the 17th day of July, 1893; the 6th day of October, 1893; the 29th day of March, 1894; and the 29th day of September, 1894—that Kinchant was unfit in body or mind for any duty whatever, and in the earliest certificate had mentioned "weakness of brain." The only facts alleged by the deponents in contravention of the statement that he was unfit for any duty are, first, that in the autumn of 1891 he appeared to be well; second, that he took the journey to Warwick in March, 1893, when he was allowed his own time for doing so. No attempt of any sort appears ever to have been made to ascertain by any independent inquiry how he was, and no one suggests that he has lived in any way inconsistent with what is alleged. Had the standing joint committee ascertained by any reasonable inquiry that there were grounds for disbelieving the statements about his health, and had they acted upon a decision that his incapacity was non-existent, they would have acted within their rights. The only ground, however, that they have ever taken has been the refusal to come from Cintra to Warwick. He had, no doubt, abundant motive for staying away and for shamming sickness, but the existence of a motive to do an act is hardly evidence that a man has done it, and it seems contrary to natural justice and to every other kind of justice to assume that a man is shamming, to require him to do what he cannot do if he is not shamming, and then to take his not doing it as conclusive evidence that he is shamming. These considerations, however, affect only the deponents upon whose affidavits I am commenting. The standing joint committee have never passed any resolution, or given any decision, that he is shamming. They have based their action entirely on his refusal to come to Warwick. If they have an absolute right to require him to come to Warwick, well or ill, with or without means, they have a right to do so whether he is shamming or not. If they

have no right to require him to come to Warwick, they cannot treat his failure to do so as a failure or refusal within the Act. If they have a right to require him to come to Warwick if shamming, and not if he is not, they have never decided or affected to decide that he is shamming, and if such a decision is involved—which I do not think it is—in their resolutions, it has been arrived at by a process which seems to me contrary to all justice. If the refusal to pay the pension be put upon the resolution of the 12th day of July, 1894, I am of opinion that the standing joint committee had no power to pass that resolution. If failure to come to Warwick to be examined gave them the right to treat Kinchant as a person whose incapacity had ceased, I think they had no right to cancel his pension without reinstating him in his old rank and pay, which the resolution did not propose to do. The standing joint committee had on the 12th day of July just taken Mr. Poland's opinion, which was read at the meeting and published in the newspapers, and which has been made an exhibit to one of the affidavits. Mr. Poland pointed out that the Act gave no power to cancel the pension without reinstatement, and pointed out that, as it was impossible to suppose that the standing joint committee really would or could reinstate under the circumstances, the pension ought to continue to be paid, and that misconduct in a bankruptcy proceeding was no cause of forfeiture, and ought not to be taken into account. It is, I think, obvious, from Mr. Poland's opinion, that the case submitted to him contained no serious suggestion that the incapacity of the applicant to serve had ceased or was not *bonâ fide*. The committee, as not infrequently happens both with individuals and with bodies of men, did not like Mr. Poland's advice, and did not take it, but feeling, no doubt, the impossibility of reinstatement, simply ordered Kinchant to attend at Warwick on the 31st day of August for further examination, and directed that if he did not, the pension should be cancelled, and they applied to the Home Office for further advice. They got a repetition of the opinion that Kinchant's conduct in evading arrest could not be overlooked, that the committee would be justified in using any of their powers to put an end to such a scandal in the force, and the Home Secretary advised them to call upon him to return for examination, and, in case of his failing to do so, to cancel his pension. This advice they adopted. I have given my reasons for thinking it erroneous. I agree with Mr. Poland that the bankruptcy matter had better not be mixed up with the exercise of statutory powers which are not by the Act of Parliament concerned with the conduct of the pensioner. Sect. 8 provides for the cases in which the pension is forfeited, and sect. 9 provides severe and just punishment for any officer who, by false representations or malingering, obtains or keeps, or attempts to obtain or keep, a pension. If a scandal is created by the retention of a pension when a man is evading examination in the Bankruptcy Court, it is a scandal against which Parliament has not pro-

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vided. The standing joint committee has no right to decide that a man is not incapacitated, without evidence and without inquiry, because it is desirable on other grounds to get rid of him. The advice upon which the standing joint committee acted assumes that the standing joint committee can name the place of inquiry as well as the person to conduct it, and that there can be no excuse, whether of illness or poverty, which can relieve a man from the necessity of producing himself for examination at a place which may be hundreds of miles from his home, and which it may be absolutely impossible for him to come to, or that the illness and poverty alleged are frauds and shams. The first assumption seems to me erroneous in law, the second to beg an important question at issue; and, even if the assumption were correct in fact, it would only give a right to cancel the pension with reinstatement, or, under sect. 9, after conviction of the fraud by a competent Court. In my opinion, therefore, the order for a *mandamus* ought to be made absolute.

The applicant having intimated his desire to appeal, Wills, J., as the junior judge, withdrew his judgment in the case.

The judgment of Cave, J. therefore stood, and the rule *nisi* was discharged with costs.

The appeal now came on for hearing.

*Dickens*, Q.C. and *Atherley Jones* for the appellant.—The *mandamus* is applied for on four grounds: (1) That the police authority had no power to prescribe a time and place for the medical examination of Kinchant, and to order him to come to Warwick; (2) that there was no express refusal on the part of Kinchant to do so; (3) that the police authority had no power to cancel Kinchant's pension without giving him an opportunity to return to the police force; (4) that the police authority did not act *bonâ fide*, because they were using their powers under the Police Act, 1890, not for the purpose of ascertaining the state of Kinchant's health, but for the purpose of aiding the Court of Bankruptcy by forcing him to return to the jurisdiction. As was said by Wills, J., in his judgment, the standing joint committee had no right to decide that a man was not incapacitated without evidence and without inquiry, because it was desirable on other grounds to get rid of him. [LINDLEY, L.J.—The person to make the examination must be a medical practitioner selected by the police authority. Has the person to be examined the right to say "I will be examined here"?] In selecting their medical man the police authority must act with due regard to the circumstances of the case. If a man cannot come to be examined, is that a failure or refusal? The police authority have purported to act under sect. 5, but they have cancelled Kinchant's pension without requiring him to serve again. Assuming, however, that he has failed or refused, the remedy is to cancel his pension and to require him to serve again. The Act is silent on the question whether it is competent for a police authority to require the prisoner's attendance for medical examination at a particular

time and place. But the test is, whether what they do is reasonable or unreasonable. It might be perfectly reasonable to require a pensioner living in Cornwall to attend in the county town of Cornwall before a medical practitioner residing in the district, but quite unreasonable to require his attendance at Newcastle-upon-Tyne; and *à fortiori* to require a pensioner living at Cintra to attend at Warwick. It is practically impossible to establish that the police authority were actuated by improper motives. It is enough to show that they were acting unreasonably and under a mistaken idea as to what their duty was. It has never been doubted seriously but that an effective examination could have been made at or near the place where Kinchant resided. The police authority did treat Dr. Lahmeyer as a competent man. But if not, they could have got a competent person residing at or near Cintra to examine Kinchant. The police authority should afford facilities for a pensioner to enjoy the fruits which the Legislature has given him, and not defeat the Act. [LINDLEY, L.J.—Can you have a *mandamus* to compel persons to act reasonably?] We do not ask for a *mandamus* to compel the police authority to act reasonably, but to comply with the provisions of the statute interpreted in a reasonable manner. There might be conditions under which the police authority might require a pensioner to undertake a railway or ship journey, but that is not the case here. The case here is, that the pensioner is residing within twelve miles of one of the principal capitals of Europe, and it may be assumed that access can be had to him by, if not an English medical practitioner, at any rate an experienced foreign one; otherwise Kinchant would be required annually to travel from Cintra to Warwick, for many years, at a large expenditure, for the purpose of satisfying the police authority that his incapacity continues. It is evident that what the police authority did was done from an indirect motive, namely, to assist the bankruptcy proceedings. We submit, therefore, that the view taken by Wills, J. was right, and that the rule *nisi* ought not to have been discharged.

*Channell*, Q.C., and *Darlington* for the respondents.—The rule *nisi* was quite rightly discharged. The police authority are under a positive obligation to satisfy themselves that the incapacity of a pensioner continues. The real cause of Kinchant's absence from this country was to avoid arrest, and the police authority being alive to that required a medical examination. They were not satisfied that he was permanently incapacitated. What was done was truly done for the purpose of satisfying themselves. The circumstances were extremely suspicious, and it cannot be imputed to them that they have really acted from an indirect motive. There is no evidence that they were using the powers of the Act improperly. The onus is on the appellant to establish that they were using these powers from an indirect motive. They were not satisfied as to the allegation of Kinchant's incapacity; therefore it was their statutory duty not to pay the

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pension until he had been medically examined. The other points taken by the appellant are entirely a matter of form. The substance is, that the Court cannot grant a *mandamus* unless it comes to the conclusion that the power has not rightly been exercised, but that what has been done has been for another motive altogether.

*Dickens*, Q.C., replied.

*Cur. adv. vult.*

Nov. 14.—The following judgment was delivered:—

SMITH, L.J.—This is an application for a *mandamus* calling upon the standing joint committee, who are the police authority for the county of Warwick, to show cause why they should not pay to the applicant, Mr. Sanderson, who is the assignee and also trustee of a pension in trust for Kinchant and his wife and family, the sum of 288*l.* being the arrears of a pension of 192*l.* per annum granted by the standing joint committee to Kinchant upon the 18th day of January, 1892, the payment of which was stopped in 1894 under the circumstances hereafter mentioned. The point to be determined is whether the payment of this pension has been legally stopped by reason of Kinchant's non-compliance with the requirement of a resolution passed by the standing joint committee upon the 12th day of July, 1894, which was that he should attend at the chief constable's office at Warwick, on Friday, the 31st day of August, 1894, between the hours of 12 noon and 3 p.m., for the purpose of examination as to the state of his health by two medical practitioners appointed by the committee. The question comes to this, Was this order that Kinchant should submit himself for medical examination at the chief constable's office at Warwick made for the purpose of satisfying the standing joint committee as to his then state of health, which would be within the jurisdiction conferred upon the standing joint committee by the Police Act of 1890 to make, or was the order made not for that purpose, but for some other purpose, in which case it would not be within the jurisdiction of the standing joint committee to make the order, and in which case the refusal of Kinchant to comply with it would afford no ground for stopping and cancelling his pension. [His Lordship stated the facts of the applicant's retirement and bankruptcy.] I do not intend to go through in detail the different resolutions which have been passed by the police authority relative to Kinchant during 1892, nor the other documents of that period, for they are fully dealt with by my brothers Cave and Wills, who have, unfortunately, differed in opinion, Cave, J. being for dismissing the rule *nisi* for the *mandamus*, Wills, J. being for making it absolute. I should, however, point out that there is no evidence during this year 1892 which shows that Dr. Guthrie Rankin's evidence as to the incapacity of Kinchant was incorrect, or that his incapacity to serve as chief constable had ceased; but, on the contrary, there is the certificate of the 21st day of September, 1892, of Dr. Lahmeyer, who, amongst other appoint-



ments held by him, was, and I believe still is, physician to the English Minister and Consul at Lisbon, which certified that Kinchant was then suffering from a crural hernia and weakness of the brain, being for that reason quite unfit for duty requiring bodily or mental activity, and on the 7th day of October, 1892, Dr. Rankin wrote to Mr. Field, the solicitor to the police authority, as follows: "His" (Kinchant's) "nervous system was completely shattered when I last saw him before he left Warwick, and if it has still further collapsed, he may now be such a wreck as to make the fatigue of travel a positive danger to life." After these statements of Dr. Lahmeyer and Dr. Rankin it was resolved by the standing joint committee upon the 10th day of October, 1892, that Kinchant should be paid his pension up to Christmas, 1892, which was accordingly done. On the 4th day of December, 1892, Dr. Lahmeyer, in answer to Dr. Guthrie Rankin, wrote as follows: "Permit me not to tell you the name of Mr. Kinchant's disease, as I fear, should he know it anyhow, he may be alarmed or frightened, and to tell you only what I think about his state of health. As far as I can judge by the symptoms Mr. Kinchant refers to me, and his wife confirms in private letters, not having the slightest reason to suspect both wish to deceive me, I am quite convinced and I know for certain, that Kinchant is suffering from a very serious chronic and organic disease which, being still at the first period, already is enough to incapacitate him by the altered state of his mind for mental duties, and such incapacity is likely not only to be permanent, but also to increase, and he is under treatment. Notwithstanding, I consider him still at present in a fit state to travel to England, not by land, but by sea, and not alone." This disease of Kinchant's was afterwards stated by Dr. Lahmeyer in a letter of the 7th day of January, 1893, to Dr. Rankin to be softening of the brain. I now pass on to the year 1893, and it is important to understand what took place in this year, though it will be remembered that what took place upon the 12th day of July, 1894, is the real point to be considered. Upon the 14th day of January, 1893, Dr. Rankin informed the police authority that he had received a letter from Dr. Lahmeyer in which he stated that he believed Mr. Kinchant was suffering from the first stage of a very serious nerve disease (Dr. Lahmeyer had stated it was softening of the brain), and that if such was the case, then he thought he was justified in saying that in all probability Mr. Kinchant was then unfit for responsible work, and that his disease was one which was likely to get progressively worse. Upon the 16th day of January, 1893, the standing joint committee resolved that Kinchant should submit himself to Dr. Rankin for examination at or near Warwick on or before the 25th day of March then next. I do not find at this date (nor, indeed, down to the 12th day of July, 1894, nor afterwards) throughout the numerous resolutions and other documents in this case any evidence to show either that Kinchant has

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ceased to be incapacitated to perform the duties of chief constable, or that what Dr. Rankin and Dr. Lahmeyer had stated from time to time was not the truth; but, on the contrary, the evidence contained in the documents is all the other way, showing the continued incapacity of Kinchant. It will be observed that in the resolution of the 16th day of January, 1893, Dr. Rankin is again the selected medical adviser of the standing joint committee to examine Kinchant. What Kinchant did in answer to this order to come over and be examined was this: He came over by sea and went to Mr. Sanderson's house at Leamington, where upon the evening of the 3rd day of March, 1893, he was examined by Dr. Rankin, and early the next morning he left Leamington and went back to Cintra, where he has since resided. I see that in the prior year—viz., on the 11th day of July, 1892—the standing joint committee had resolved that Mr. Sanderson be required to arrange for the attendance of Mr. Kinchant and Dr. G. Rankin at Warwick (or some convenient place near Warwick), so that there was nothing remarkable in Kinchant going to Mr. Sanderson's house, who was the trustee to whom his pension had been assigned for the benefit of Kinchant's family. But, although this is so, I have no doubt that the way in which this attendance in England to be examined was carried out by Kinchant, and probably Sanderson, was to evade the execution of the warrant which was out against him; but this affords no reason for cancelling his pension unless it is to be inferred that he acted as he did because his incapacity had ceased, and he did not wish this to be discovered. Upon the established facts of the case I can draw no such inference. He submitted himself at the expense of 25*l.* to the examination of the standing joint committee's own medical man: he obeyed their order by travelling some 1200 miles from Cintra to Leamington to do so, though by the course he adopted he evaded the execution of the warrant of the Bankruptcy Court upon him. Being able to travel by sea as Dr. Lahmeyer had certified he was on the 4th day of December, 1892, is a very different thing from being capable of performing the duties of chief constable of Warwickshire. Upon the 18th day of March, 1893, Dr. Rankin reported to the standing joint committee that he had examined Kinchant upon the 3rd day of March and found him suffering from rupture upon the right side, which evidently gave him much concern and considerable trouble; also from a condition of nervous instability, which might betoken the advent of serious disease; that his appearance was much altered, and that he had become very thin. "In my opinion," he added, "he is not at present in a fit state of health to undertake responsible duty." It is clear that at this time Kinchant was living at Cintra in order to defraud his creditors and evade the bankruptcy laws of this country, and it is not surprising that the standing joint committee should resent having to pay a man a pension out of the county rates when he was remaining abroad defrauding his

creditors and defying the bankruptcy laws, and should be desirous if possible of terminating such a state of things. In these circumstances, upon the 10th day of April, 1893, the standing joint committee wrote to the Home Office. They had written before in December, 1892, principally about whether, if they required Kinchant to serve again, as provided by sect. 5 (4), they ought to dismiss Captain Brinkley. Throughout this letter of April, 1893, to the Home Office there is not a suggestion that the committee believed or even suspected that Kinchant's incapacity had ceased, or that he was fit for duty. It states that Dr. Rankin had reported that Kinchant had presented himself for examination upon the 3rd, and that Dr. Rankin had certified that Kinchant was not at present in a fit state of health to undertake responsible duty. It set forth a copy of a letter of the 30th day of March, 1893, from the Official Receiver in Bankruptcy to the standing joint committee, complaining that the police authority had not assisted the Bankruptcy Court in executing its warrant, and in which was this passage: "I (*i.e.*, the Official Receiver) beg, therefore, to enter very respectfully, but most emphatically, a strong protest against the payment of any portion of the bankrupt's pension to him or his assignee on the ground that it is an anomalous thing for a bankrupt to be provided by a public body with funds which enable him to set the orders of a Court of law at defiance, and, further, that with the aid of public officials, the bankrupt has been allowed to evade the examination of the Court." This letter of the committee to the Home Office also stated that the police authority considered that they were bound to continue to pay the pension for another year, and suggested that possibly sect. 8 of the Act (which relates to a forfeiture of a pension) might be brought into play. What the letter from the Official Receiver had to do with the legal right of the standing joint committee to discontinue Kinchant's pension I do not understand, though it was but natural that a body of gentlemen like the standing joint committee should refer to it when seeking advice from the Home Office. Upon the 13th day of April, 1893, the Home Office sent back answer: (a) That Kinchant's pension was not forfeited under sect. 8 of the Police Act, 1890, because the warrant for arrest was not for a criminal offence. (b) That the police authority should either abstain from paying the pension till ordered by a Court of law, or should, under sect. 5, call upon Kinchant to submit himself again to medical examination, and should require him to appear at Warwick on some day about a month hence, to be fixed by them before a medical man (not Dr. Rankin) to be named by the committee; and the letter concludes, "The Secretary of State is confident that the standing joint committee will do all in their power to support the Court of Bankruptcy in this matter. It is not for me to criticise this advice, nor should I allude to it except that, in adjudicating upon this case, I am forced to do so, and I must say that, if what the police authority subsequently

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did upon the 12th day of July, 1894, was to order Kinchant over here, not in reality for the purpose of examining him to see if his incapacity had ceased, but for the purpose of supporting the Court of Bankruptcy, or indeed for any purpose other than that of satisfying themselves that he was no longer incapacitated, then, what the committee did upon the 12th day of July, 1894, in my judgment, was without jurisdiction, and cannot be upheld in a Court of law. The Police Act of 1890 upon this matter is as follows: By sect. 5, sub-sect. 3, it is enacted "That, where a pension is granted upon the ground of incapacity, the police authority shall yearly or otherwise . . . satisfy themselves that the incapacity continues, and, unless they resolve that such evidence is unnecessary, shall satisfy themselves by the evidence of some legally qualified medical practitioner or practitioners selected by them." By sect. 5 (4) it is enacted: "In the event of the incapacity ceasing . . . the police authority may cancel his pension and require him to serve again in the police force in a rank not less than the rank which he held before his retirement; and at a rate of pay not less than the rate which he received before his retirement"; and by sect. 5 (7) it is enacted "That if a constable (read chief constable, sect. 12) fails or refuses when required by the police authority to be examined by some legally qualified medical practitioner selected by that authority, the police authority may deal with the constable in all respects as if they were satisfied by the evidence of such a practitioner that the constable is not incapacitated from the performance of his duty." It appears to me that the only power conferred upon a police authority under these sections, to require a pensioner to submit himself to examination, is for the purpose of satisfying themselves as to his continued incapacity, and, if the order is made for some other purpose, then, in my judgment, the authority have exceeded their jurisdiction; they have used the provisions of the statute for purposes not authorised by it, and the pensioner is not bound to comply with a requisition which is made without jurisdiction. I agree that, when an order for examination is made by a standing joint committee, and it is not obeyed, it lies upon the pensioner who disobeys it to establish that the order was made without jurisdiction. The onus is upon him, and the question is, has the applicant in the present case satisfied that onus? Upon the receipt of the Home Office letter, the standing joint committee, upon the 17th day of April, 1893, resolved, by the votes of twenty-one to four, that they were satisfied by the evidence of Dr. Rankin that Kinchant's incapacity to serve again continued. This, it will be noticed, was a month after the committee were aware of the examination by Dr. Rankin upon the evening of the 3rd day of March at Mr. Sanderson's house at Leamington. They also resolved to pay his pension due on the 25th day of March, 1893. But, although the standing joint committee resolved as above, they at the same time also resolved that Mr. Kinchant be required to present himself at the

county police building headquarters in Warwick on Monday, the 12th day of June next, between the hours of 1 and 3 p.m., for examination as to the state of his health by two medical practitioners to be selected by the committee, failing which his pension be cancelled, and Dr. Rankin and Dr. Bullock were selected as such practitioners. Why was the last resolution come to? For what purpose was Kinchant then summoned from Cintra to the headquarters of the police at Warwick upon a named day between specific hours when the standing joint committee were satisfied—as by their own resolution they show that they were—that Kinchant's incapacity to serve still continued? There is but one answer, and that is, that the committee did not summon him to satisfy themselves as to his incapacity—of this they were satisfied—but they summoned him as the Home Office letter had pointed out they should, and to assist the Court of Bankruptcy, and so, if possible, put an end to what the Home Office subsequently described as a scandal in the force. Upon the 17th day of July 1893, the standing joint committee cancelled Kinchant's pension because of non-attendance for medical examination upon the 12th day of June, 1893; and, upon the 9th day of October, 1893, the committee dismissed Kinchant from the force, although upon the 17th day of July, 1893, Dr. Lahmeyer had certified that Kinchant was then still quite unfit for mental and bodily work. It appears from a minute of the standing joint committee of the following year—viz., of the 16th day of April, 1894—that by that time the committee had been advised by Mr. Dickens, Q.C.—as, in my judgment, undoubtedly was the case—that their order of the 17th day of April, 1893, and the subsequent orders founded thereon, could not stand, and upon that day—the 16th day of April, 1894—they rescinded what they had done in 1893 in relation to ordering Kinchant over to Warwick and as to cancelling his pension and dismissing him from the force, and resolved that the arrears of his pension should be paid to him. Upon the 29th day of March, 1894, Dr. Lahmeyer had again given a certificate in which he stated that Kinchant had been under his treatment for nearly two years, and was still, and that he never had been at any time fit for any sort of work. In July, 1894, the standing joint committee sought the advice of Mr. Poland in these circumstances. A notice had been given by a member of the committee that, at the meeting of the standing joint committee about to be held on the 16th day of July, 1894, a motion practically identical with the motion carried upon the 17th day of April, 1893, summoning Kinchant over from Cintra to Warwick would again be made, the only difference being that Mr. Kinchant would therein be called upon to attend at the police office, Warwick, upon the 31st day of August, 1894, instead of the 12th day of June, 1893. Throughout the case submitted to Mr. Poland there is not a suggestion that Kinchant had or might have ceased to be incapacitated from duty, which, considering the position now taken up by the committee

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in answer to this rule, is very remarkable. Upon the 12th day of July, 1894, the standing joint committee, as it appears to me, disregarding Mr. Poland's opinion and following that of the Home Office, resolved that Kinchant should attend the chief constable's office at Warwick, on Friday, the 31st day of August, 1894, for the purpose of examination as to the state of his health by two medical practitioners approved of by the standing joint committee, and that no further pension be paid to Mr. Kinchant until the report of such examination had passed the standing joint committee, and, failing submission to such examination, the pension be cancelled, and Mr. Kinchant's name be struck off the list of police pensioners; and by way of amendment it was also resolved that, the Home Secretary having declared in the House of Commons his willingness to express his views on Mr. Kinchant's matter if the committee desire to have it, the clerk ask for the Home Secretary's opinion and send him prints or copies of the notices, reports, and minutes relating to the proceedings of the committee with reference to Mr. Kinchant's claim to a pension; also the opinions of Mr. Dickens, Q.C., and Mr. Poland, and a copy of this resolution. This was accordingly done upon the 13th day of July, 1894, and in this letter to the Home Office no suggestion is made that the standing joint committee had any idea that Kinchant's incapacity to perform the duties of chief constable had ceased. I need not proceed further with a narrative in detail of the facts subsequent to this date; it is sufficient to state that Kinchant did not appear to be examined upon the 31st day of August, 1894. He, in my opinion, refused to obey the order, and the committee upon this ground refused to pay him his pension, and it remains unpaid, and hence the present application by way of *mandamus*. I have pointed out that it is manifest upon the joint committee's own documents that the order for medical examination of Kinchant of the 17th day of April, 1893, was made without jurisdiction, it not having been made for the purpose authorised by the Act. Then what had occurred between the 17th day of April, 1893, and the 12th day of July, 1894, to alter the position of matters? I have searched in vain through the documents in this case for any evidence or suggestion of any altered position for the better in Mr. Kinchant's health. I can find none. It is true that fifteen months had elapsed, but I find during the period the certificate of Dr. Lahmeyer of the 29th day of March, 1894, above alluded to, as to his being then unfit for any sort of work. I find that upon the 16th day of April, 1894, the standing joint committee cancelled their order of the 17th day of April, 1893, for his attendance at Warwick, and I also find that in a case stated by the committee in July, 1894, for Mr. Poland's advice, it is not even suggested that Mr. Kinchant might have improved in health so as to be fit for duty, and, what is also very remarkable, not even a suggestion that the committee thought that he was.



The truth is, the standing committee upon the 12th day of July, 1894, never thought any more than they did upon the 17th day of April, 1893, that Kinchant's incapacity for duty had ceased, and that he was fit to undertake the office of chief constable, and that it is untrue to now say that they did or required satisfying upon the point. What they did think, and I have no doubt *bonâ fide* and honestly thought, was that they would be acting within their jurisdiction and doing what was right if they followed the advice given to them by the Home Office, and that they did follow it, and so have been led to act in excess of their jurisdiction. [His Lordship then reviewed the evidence of certain members of the joint committee, and came to the conclusion that the applicant had established that the order for the examination of Kinchant contained in the resolution of the 12th day of July, 1894, was made by the standing joint committee not really for the purpose of examining him as to the state of his health, but in order to carry out the advice of the Home Office, and, consequently, was made without jurisdiction; that Kinchant, therefore, was not bound to obey it, and that his pension having been forfeited for such disobedience the *mandamus* should go, that being the only remedy Kinchant had whereby to obtain continued payment of his pension of which he had been illegally deprived. His Lordship continued as follows:] There is also another ground upon which, in my judgment, the order to submit to medical examination contained in the resolution of the 12th day of July, 1894, is invalid. Sect. 5, sub-sect. 4, of the Police Act, 1890, enacts that, "In the event of the incapacity ceasing . . . the police authority may cancel his pension and require him to serve again in the police force in a rank not less than the rank which he held before his retirement, and at a rate of pay not less than the rate which he received before his retirement." The latter part of the section was clearly inserted in favour of the officer in this—that, if the incapacity ceased, although the standing joint committee might (the word is may) cancel his pension, yet if they did so they were to give him the option of serving again in the force in a rank not less than he had hitherto served, and at no less pay, so that the officer might not be cast adrift. In this case the standing joint committee by their resolution of the 12th day of July, 1894, have given Kinchant no such option. They have ordered him to attend and be medically examined upon the 31st day of August, 1894 . . . and failing submission to such examination his pension be cancelled and his name be struck off the list of pensioners. I may add, though I do not think that it is material to the point in hand, that it seems that the order was advisedly made in the form it was without giving Kinchant the option of returning to the force, for Mr. Poland had pointed out to the committee that they could not desire to reinstate a man of broken health or a man, whatever might be the state of his health, who was an undischarged

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bankrupt, in the office of chief constable of Warwickshire; and, indeed, this is obvious. So the committee determined not to give Kinchant the offer of reinstatement, and in my judgment the order is, therefore, bad upon its face, for the statute enacts that they shall. It was argued, on the applicant's behalf, that the order was also bad, because it named time and place for Kinchant's examination, and it was said that the standing joint committee had no power to name the one or the other, and that it was for the pensioner to prescribe when and where the examination should take place. I do not so read the Act. Nothing is said about time or place of examination in it, but it will be seen (sect. 5) that, before granting a pension upon the ground of incapacity, the police authority are to be satisfied by the evidence of some legally qualified medical practitioner selected by them that the proposed person is incapacitated. Well, who in such a case is to appoint time and place for this necessary examination by the medical practitioner selected by the authority? Can it be said that the proposed pensioner is the person to say when and where the examination shall take place, and thus compel the medical practitioner selected by the police authority to go to him whenever and wherever he may choose? The construction of the statute appears to me to be unreasonable and untenable. So again (sub-sect. 7 of sect. 5) if a pensioner fails or refuses when required by the police authority to be examined by some legally qualified medical practitioner selected by them, they may deal with the pensioner in the prescribed manner. Is it to be said that, although the police authority can require the pensioner to be examined to satisfy them that the incapacity continues, by their selected medical practitioner yet neither the authority nor the practitioner but only the pensioner can name the time and place for such examination? I think not. It appears to me that the true reading of the statute is that the police authority or the medical practitioner has jurisdiction to name time and place for the purpose of giving effect to the order for examination. The direction as to time and place is not the substantial part of the order for examination, and if Kinchant had attended for examination, and been examined, although not at the time and place indicated, he could not have been treated as disobeying the order. The introduction into the order of a time and place does not vitiate it. I agree with Cave, J. in thinking that the authority has not been exceeded in this particular, and if the case had rested upon this point I should have said a *mandamus* ought not to go. But for the other reasons above stated I am of opinion that the *mandamus* should go, which was Wills, J.'s opinion (although he, I think, attached too much importance to the form of the order), and that this appeal must be allowed, with costs to the applicant here and below, the judgment of the Queen's Bench Division, by reason of Wills, J. having withdrawn his judgment, being that it should be refused.

LINDLEY, L.J.—I have had an opportunity of reading the judgment of Smith, L.J., and I entirely concur in it.

*Appeal allowed.*

Solicitor for the appellant, *Casson Perrott-Smith*.

Solicitors for the respondents, *Field, Roscoe, and Co.* agents for *Field, Leamington*.

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### CROWN CASES RESERVED.

*Saturday, Nov. 7, 1896.*

(Before HAWKINS, CAVE, GRANTHAM, LAWRENCE, and  
WRIGHT, JJ.)

REG. v. JOHN KING. (a)

*False pretences—Evidence—Opinion of witness—Permissible question—Larceny and misdemeanour—Practice—Indictment—Multiplying counts in—Effect of new sentence on person released on licence—27 & 28 Vict. c. 47, s. 9.*

*On the trial of an indictment for obtaining goods and credit by false pretences, if the alleged false representation is in writing, it is permissible to ask the person who is alleged to have been defrauded, what opinion he formed on seeing the writing.*

*A person convicted of obtaining goods by false pretences cannot subsequently on the same facts be convicted of larceny.*

*The counts in an indictment should be restricted to those only which are necessary to formulate the charge against the defendant; to multiply them is to embarrass the defendant in his defence.*

*Per Hawkins, J.: If the counts in an indictment are numerous, it is reasonable to ask the Court to try each count separately.*

*And also per Hawkins, J.: A Court in passing a sentence on a person who has been released on licence has no jurisdiction to order that the new sentence shall be concurrent with the unexpired portion of the old sentence, which the convict becomes liable to complete.*

CASE stated for the opinion of the Court by the chairman of the Huntingdon Quarter Sessions.

No counsel appeared.

(a) Reported by A. A. BETHUNE, Esq., Barrister-at-Law.

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The material portions of the case are stated in the judgment of Hawkins, J.

HAWKINS, J.—I wish this case had been argued, for it raises a question of considerable importance. The case states that “at the Midsummer Quarter Sessions of the Peace, holden at Huntingdon, in and for the county of Huntingdon, on Tuesday, the 30th day of June, 1891, John King stood indicted and charged with various charges of misdemeanour, to wit, obtaining goods by false pretences, of attempting to obtain goods by false pretences, and of obtaining credit for such goods by false pretences, or other fraud, under the provisions of 32 & 33 Vict. c. 62, s. 13,” the counts in such indictments numbering in the whole forty, to all of which the defendant pleaded “Not guilty.” I pause here, for I think it a scandal that a man should be put to answer forty charges. It may, of course, be legally done, but I think it cannot be done without the prisoner being grievously prejudiced. It has occurred to me more than once that it is a cruel thing to multiply the charges in one indictment. I remember in one case of a bankruptcy prosecution an indictment which contained ninety-nine counts, and was told that there was a case in which the indictment had contained 114 counts. In such a case it would not be unreasonable to ask the Court to try each case separately. Moreover, in the case before us some of the counts are hopelessly bad. The first count charges that the prisoner, John King, on the day stated “unlawfully, knowingly, and designedly did falsely pretend to Robert William Shackleton and others trading as the Dairy Supply Company Limited that the said John King was then carrying on business, as a farmer or dairyman, and that the said John King did then require two Bessemer steel milk churns for use in the said business, by means of which false pretences the said John King did then unlawfully obtain from the said Robert William Shackleton and others trading as aforesaid, two Bessemer steel milk churns of the value of two pounds and eighteen shillings with intent to defraud.” The second count in similar language deals with the case of similar milk pails on another day. It would be useless to criticise the other counts. The question is whether certain evidence was wrongly admitted in support of the charges stated in counts 1, 2, 3, 4, and 9. The evidence is thus stated in the case. “A witness of the name of Robert William Shackleton referred to in such counts was called and was asked by counsel for the prosecution what opinion he (witness) formed as to the position and occupation of the defendant on the receipt by him of a certain letter in which appeared the expression ‘that the churns were required for home use,’ and of which the following is a copy, and which said letter was received by him in answer to a communication addressed by him to defendant, ‘Earith, Hunts, the 5th day of September 1895. The two six gallon milk churns on order do not require name on them as they are only required for home

use.—Yours truly, JOHN KING.’” Whereupon counsel for the defendant objected to such question upon the ground that the meaning and construction of such letter was a question for the jury, and quoted as his authority the dictum laid down in *Reg. v. Cooper* (2 Q. B. Div. 510; 46 L. J. 219 M. C.) The Court overruled such objection, and permitted the witness to reply to the said question, which reply was: “I thought the defendant was either a farmer or a dairyman.” And, on the said William Edward Hankey being called to give evidence in support of the charge of obtaining twenty gallons of machine oil by false pretences, a certain letter from the defendant to witness was proved, and put in and read as follows: “For trial order this slip to be detached.—Date 7, 10, 1895.—242.—From John King, Earith, Hunts, to W. E. Hankey and Co., oil manufacturers, 71, Bow-road, Bow, London, E.—Please forward to Bluntisham station, per Great Eastern Railway, carriage paid, twenty gallons of your best lubricating machine oil. This order is given subject to the following conditions, viz.:—That if the oil does not suit the purpose, it is to be returned to you at your own expense within one month of its dispatch, and in such case we are only to pay for the quantity we have used. If it is kept over one month we are to pay for it.—Signed, JOHN KING. Here please fill in brand of oil required.” Whereupon counsel for the prosecution proposed to put the following question to witness, which was objected to on the grounds above set out:—“Upon receipt of the order signed by the defendant what opinion did you form as to the position and occupation of the defendant?” Whereupon the Court overruled the objection, and the witness replied: “I thought from the printed order issued by my firm, which was only sent out to machine owners and persons of that class, and forwarded by defendant to my firm, that he, the defendant, was an agricultural machine owner.” On the close of the case for the prosecution, and after counsel had addressed the jury on behalf of the defendant (who submitted that there was no false pretence committed within the meaning of the statute) and the chairman had summed up the case to the jury the following three questions were left to them: 1. Do you find the defendant guilty or not guilty of obtaining goods from the Dairy Supply Company or from William Edward Hankey and Co. by false pretences? 2. Do you find the defendant guilty or not guilty of attempting to obtain the goods of the Dairy Supply Company and William Edward Hankey and Co. by false pretences? 3. Do you find the defendant guilty or not guilty of obtaining credit by fraud on all or any of the counts of fraud? To all of which three questions the jury returned a verdict of “guilty,” and the defendant was thereupon sentenced to three years’ penal servitude on the first charge; to a like period of three years on the second charge, such sentences, however, to run concurrently; and on the third charge he was ordered to be imprisoned for twelve calendar

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REG. months with hard labour, such latter sentence, however,  
 v. to run with the former sentences." Now, the question  
 JOHN KING. put to us with regard to these counts is whether the question  
 — put to the witnesses Shackleton and Hankey, and the replies  
 1896. thereto, were admissible. Now, I confess that, although when  
 — dealing with this case at first I had misgivings as to whether the  
 False evidence was admissible, yet upon consideration I have come to  
 pretences— the conclusion that it was admissible. It was necessary to prove  
 Evidence— three things: firstly, that the false pretence was made;  
 Opinion of the goods were obtained by the person who made  
 witness— the false pretence; thirdly, that the person who made the goods  
 Practice— parted with the goods because he believed the false pretence.  
 Indictment— No question is raised as to the first or second points, and we  
 Multiplica- may therefore go to the third point—did the prosecutor believe  
 tion of counts the false pretence? The question might have been put more  
 —Ticket of pointedly; if counsel had said, "What did you believe after  
 leave man— receiving that letter?" there could have been no doubt as to the  
 Fresh sentence admissibility of the answer. I am of opinion, therefore, that the  
 —Jurisdic- evidence was admissible, though, of course, it was not decisive  
 tion of court on the question which the jury had ultimately to decide. As to  
 as to—27 & 28 the sentences, I may say that, if on the face of the documents  
 Vict. c. 47, before us we saw that an illegality had taken place, we should  
 s. 9. interfere. The prisoner, on conviction on the first count, was  
 liable to a sentence of five or seven years penal servitude; he  
 received, in fact, a sentence of three years, and was therefore  
 legally sentenced. Although the question is not before us, I  
 should like to take this opportunity of pointing out that a mis-  
 apprehension prevails frequently at quarter sessions, and some-  
 times at the assizes, as to the effect of a sentence passed on a  
 convict who has been released on a ticket-of-leave. A man let  
 out of prison on a ticket-of-leave is released on the condition  
 that if he is convicted of another offence his licence is forfeited,  
 and that he is to be thereupon liable to complete his original  
 sentence. The words of the Penal Servitude Act (27 & 28 Vict.  
 c. 47), s. 9, are that the prisoner shall, after undergoing the new  
 sentence, be subject to complete his relegated sentence. There  
 is no jurisdiction, therefore, in the tribunal to make the  
 relegated sentence concurrent with the new sentence, the statute  
 is explicit. If therefore the Court from motives of humanity  
 desires that the prisoner shall not be subject to this further  
 punishment, a representation should be made to the Home  
 Secretary. We are also asked whether the prisoner, having  
 been convicted on the indictment charging him with obtaining  
 goods on false pretences, could properly be convicted on another  
 indictment charging him with larceny of the same goods. Now  
 he had been convicted of a misdemeanour in respect of this  
 offence, and it is against all principle of the criminal law that a  
 man shall be put in peril twice in respect of the same offence. We  
 are of opinion that this second trial should not have taken place,  
 and that the conviction on that indictment must be quashed.

CAVE, J.—We are asked first whether the questions put to Shackleton and Hankey were admissible. In my opinion those questions were not only admissible but necessary, for without putting such questions it would have been impossible to have made out the case for the prosecution. It seems to me, therefore, that the prisoner was properly convicted on that indictment. As to the second question which we are asked to answer, whether the prisoner, having been convicted of obtaining goods by false pretences, could then on the same facts be convicted of larceny of the same goods, I am clearly of opinion that he could not. I entirely concur with what has been said as to the length of the indictment. Six counts would have contained all that was necessary, and I should, if I had tried this case, have been disposed to disallow the costs of the prosecution.

GRANTHAM, LAWRENCE, and WRIGHT, JJ. concurred.

No solicitors appeared.

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## CROWN CASES RESERVED.

*Aug. 1 and Nov. 7, 1896.*

(Before Lord RUSSELL, C.J., POLLOCK, B., HAWKINS, GRANTHAM, and LAWRENCE, JJ.)

REG. v. SMALMAN. (a)

*Embezzlement—Clerk or servant—Assistant overseer—Servant of inhabitants of parish—Local government—Parish council—Money proceeds of poor rate not vested in parish council—43 Eliz. c. 2—59 Geo. 3, c. 12, s. 7—24 & 25 Vict. c. 96, s. 68—51 & 52 Vict. c. 41, s. 75—56 & 57 Vict. c. 73, ss. 5, 6, 81 (4).*

*It is provided by the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 5 (1), that the power of appointing and revoking the appointment of an assistant overseer in every rural parish which has a parish council shall be transferred to and vested in the parish council; by sect. 5, sub-sect. 2 (c) that the legal interest in all property vested either in the overseers or in the churchwardens and overseers of a rural parish, other than pro-*

(a) Reported by A. A. BETHUNE, Esq., Barrister-at-Law.



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—“ Clerk or  
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Servant of  
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as parish  
council—  
Appropriation  
of poor rates  
— Local  
Government  
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56 & 57 Vict.  
c. 73, ss. 5, 6,  
81 (4).

perty connected with the affairs of the Church, or held for an ecclesiastical charity, shall be vested in the parish council; and by sect. 81 (3) that any existing assistant overseer in a parish for which a parish council is elected, shall, unless appointed by a board of guardians, become an officer of the parish council.

An assistant overseer was indicted, under 24 & 25 Vict. c. 96, s. 68, for embezzling, as the servant of the inhabitants of the parish, moneys which he had in his possession as assistant overseer. It was argued in objection to the indictment that the effect of the Local Government Act, 1894 is to make the assistant overseer the servant no longer of the inhabitants of the parish, but of the parish council, and to vest the property in all public moneys received by the assistant overseer, in the parish council.

Held, that an assistant overseer is the servant of the inhabitants of the parish for which he is appointed; that moneys which the assistant overseer has in his possession as the proceeds of rates do not become the property of the parish council; and that consequently the prisoner was properly described in the indictment as in the employment as servant of the inhabitants of the parish; and that the money which he was alleged to have embezzled was properly described as the property of the inhabitants of the parish.

CASE stated by Hawkins, J.

The prisoner was indicted at the Hereford Assizes for embezzling moneys which he had received as assistant overseer of the parish of Upton Bishop. The indictment on which he was arraigned, charged in each count that he “being in the employment as servant of the inhabitants of the parish of Upton Bishop,” did “whilst he was so employed as aforesaid receive and take into his possession” money “for and in the name and on the account of the said inhabitants of the said parish of Upton Bishop his employers,” and that the prisoner “the said money the property of the said inhabitants of the said parish of Upton Bishop, his employers, feloniously did steal,” &c.

The case stated by Hawkins, J. was as follows:—

In the course of the trial the question of law arose whether the prisoner was rightly described in the indictment as “being in the employment as servant of the inhabitants of the parish of Upton Bishop,” and as having, “whilst he was so employed,” received in their name and on their account the moneys alleged to have been embezzled.

The prisoner was duly nominated, elected, and appointed assistant overseer for the parish of Upton Bishop, under 59 Geo. 3, c. 12, s. 7, in December, 1893.

On the 16th day of April, 1895, he was also appointed to that office, and to the office of clerk to the parish council, by the

parish council for the parish of Upton Bishop, under sect. 5 of the Local Government Act, 1894 (56 & 57 Vict. c. 73).

Neither of the appointments above mentioned was in form revoked, and he continued to hold his offices until the 30th day of January, 1896, when he was dismissed from them.

The embezzlements were each committed after the month of April, 1895, and before his dismissal.

He was never appointed by the guardians of the Ross Union within which the parish of Upton Bishop was comprised, either as collector of poor rates or as assistant overseer of the parish, under 12 & 13 Vict. c. 103, s. 15, nor could he have been so appointed after 56 & 57 Vict. c. 73, ss. 3, 81 (6). For the prisoner it was contended that he was wrongly described in the indictment, see 56 & 57 Vict. c. 73, s. 81 (3). For the prosecution the case of *Reg. v. Carpenter* (L. Rep. 1 C. Cas. Res. p. 29) was relied on.

The question raised is one so likely to arise in future that I have thought it right to reserve it for the consideration of the Court for Crown Cases Reserved.

I have not thought it necessary to burden the case by referring to the variety of sections in the Act, which must be called attention to when the case is argued.

If the objection taken by the prisoner's counsel is a valid one, the conviction is to be quashed; otherwise not.

The prisoner remains in custody.

H. HAWKINS.

The Court called upon

*Macmorran*, Q.C. and *Gwynne James* for the Crown.—Before the coming into operation of the Local Government Act, 1894 (56 & 57 Vict. c. 73) an assistant overseer, having been nominated and elected by the inhabitants in vestry assembled, was appointed by the justices in accordance with the provisions of 59 Geo. 3, c. 12, s. 7, but that statute required that the bond which the assistant overseer gave for the faithful execution of his office should be made with the churchwardens and overseers. It was held in *Reg. v. Watts* (7 A. & E. 461; 7 L. J. 72, M. C.), approved in *Points v. Attwood* (6 C. B. 38; 2 Lutw. Reg. Cas. 117; 18 L. J. 19, C. P.; 13 Jur. 83), that he was not a servant of the overseers; and in the case of *Reg. v. Carpenter* (14 L. T. Rep. 572; L. Rep. 1 C. C. R. 29; 35 L. J. 169, M. C.; 12 Jur. N. S. 380) it was held that an assistant overseer was the servant of the inhabitants of the parish for which he was appointed. By the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 5 (1), the power of appointment to the office and the power of revoking such appointment is transferred to the parish council. The money which the assistant overseer collects is not vested in the parish council, which has no power to make or levy rates, and can only obtain funds through the overseers in the manner provided by sect. 11 (4), for the overseers, with whom the assistant overseer still makes a bond, are accountable for the money as trustees for the inhabitants. The Local Government Act, 1894 (56 & 57 Vict.

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c. 73) makes no change in the duties of the assistant overseer, sect. 81 (4), and sect. 17 merely imposes on the person appointed to be assistant overseer the additional duty of acting as clerk to the parish council. Any transfer of the powers or duties of the overseers made by the Local Government Act, 1894 (56 & 57 Vict. c. 73) to the parish council is made specifically, as in sect. 5. The kind of property intended to be transferred to and vested in the parish council by sect. 5 (2) (c) and sect. 6 (2) (c) is indicated by sect. 52 (3) and (4), and does not include money, the proceeds of rates, in the hands of the overseers.

*Cranston* for the prisoner.—The assistant overseer is appointed and may be dismissed by the parish council (56 & 57 Vict. c. 73, s. 5, sub-sect. 1). He is, therefore, the servant of the parish council, and even if this be not so, all existing assistant overseers—and the prisoner was "an existing assistant overseer"—became, on the coming into operation of the Local Government Act, 1894 (56 & 57 Vict. c. 73), officers of the parish council by virtue of the provisions of sect. 81 (3). By sect. 5 (2) (c) the legal interest in all property vested either in the overseers or in the churchwardens and overseers of a rural parish other than church property is vested in the parish council, and by sect. 6 (1) (c) the powers, duties, and liabilities of the overseers or of the churchwardens and overseers of the parish with respect to the holding or management of "parish property," not being property relating to the affairs of the Church, or held for an ecclesiastical charity, are transferred to the parish council. "Property" as defined by the Local Government Act, 1888 (51 & 52 Vict. c. 41, s. 100) includes money, and it is provided by sect. 75 of the Local Government Act, 1894 (56 & 57 Vict. c. 73) that expressions used in that Act shall have the same meaning as in the Local Government Act, 1888 (51 & 52 Vict. c. 41).

*Cur. adv. vult.*

Nov. 7.—Lord Russell, C.J. and Pollock, B. being absent on circuit, the judgment of Pollock, B. (with which Lord Russell, C.J. concurred) was read by

HAWKINS, J.—The prisoner was tried before Hawkins, J. at the last Summer Assizes at Hereford, and found guilty of embezzling money which he had collected as assistant overseer of the parish of Upton Bishop. In the indictment the prisoner was described as "being in the employment, as servant, of the inhabitants of the parish of Upton Bishop," and it was alleged that whilst he was so employed he received certain money "on the account of the said inhabitants, his employers." The prisoner's counsel contended that the indictment was bad, inasmuch as the prisoner's employment was wrongly described. The material facts as stated in the case are as follows: The prisoner was duly nominated and appointed assistant overseer for the parish of Upton Bishop under 59 Geo. 3, c. 12, s. 7, in December, 1893. On the 16th day of April, 1895, he was also appointed to that office and to the office of clerk to the parish council by the

parish council for the parish of Upton Bishop under sect. 5 of the Local Government Act, 1894 (56 & 57 Vict. c. 73). Neither of the appointments above mentioned was in form revoked, and he continued to hold his offices until the 30th day of January, 1896, when he was dismissed from them. The embezzlements were each committed after April, 1895, and before his dismissal. He was never appointed by the guardians of the Ross Union within which the parish of Upton Bishop was comprised either as collector of poor rates, or as assistant overseer of the parish under 12 & 13 Vict. c. 103, s. 15, nor could he have been so appointed after the 56 & 57 Vict. c. 73, s. 81. The 59 Geo. 3, c. 12, s. 7, provided for the election of assistant overseers by "the inhabitants of any parish in vestry assembled." The same section enacted that two justices are to appoint such person so elected. It is clear, however, that they were when so elected and appointed, the servants of the inhabitants of the parish, notwithstanding their formal appointment by the justices; and accordingly, when it became necessary to prosecute an assistant overseer for embezzlement he was usually described as in the present indictment; and in *Reg. v. Sampson* (1 C. C. C. 355) it was decided by Rolfe, B. that an indictment describing an assistant overseer as a "clerk or servant to the overseers" was bad, and in *Reg. v. Carpenter* (L. Rep. 1 C. C. R. 29) it was held that an assistant overseer was properly described as a "servant of the inhabitants of the parish." Thus far there seems no difficulty. But in 1894 the Local Government Act (56 & 57 Vict. c. 73) was passed, and this Act materially alters the mode of appointing assistant overseers, and uses language which creates a doubt and has given rise to the question raised in the present case. This Act constitutes for the first time in rural parishes a "parish council," and to this council are transferred certain powers and duties which had before been discharged by the vestry. Sect. 5 (1) is as follows: "The power and duty of appointing overseers of the poor and the power of appointing and revoking the appointment of an assistant overseer for every rural parish having a parish council shall be transferred to and vested in the parish council, and that council shall in each year, at their annual meeting, appoint the overseers of the parish, and shall as soon as may be fill any casual vacancy occurring in the office of overseer of the parish, and shall in either case forthwith give written notice thereof in the prescribed form to the board of guardians." By sect. 6 (1) it is provided that upon the parish council of a rural parish coming into office, there shall be transferred to that council (a) the powers, duties, and liabilities of the vestry of the parish except (i.) so far as relates to the affairs of the church or to ecclesiastical charities, and (ii.) any power, duty, or liability transferred by this Act from the vestry to any other authority; and it is provided also by sect. 81 (1) that where the powers and duties of any authority other than justices are transferred by this Act to any parish or district council, the officers of that

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authority shall become the officers of that council; and by (3) that any existing assistant overseer in a parish for which a parish council is elected shall, unless appointed by a board of guardians become an officer of the parish council; and by (4) that every officer, vestry clerk, and assistant overseer, as above in this section mentioned shall hold his office by the same tenure and upon the same terms and conditions as heretofore, and while performing the same duties shall receive not less salary or remuneration than heretofore. The statute under which the prisoner was indicted is the 24 & 25 Vict. c. 96, which by sect. 68 provides that whosoever being a clerk or servant, or being employed for the purpose or in the capacity of a clerk or servant, shall fraudulently embezzle any chattel, money, or valuable security, which shall be delivered to or received or taken into possession by him for or in the name or on the account of his master or employer, or any part thereof, shall be deemed to have feloniously stolen the same from his master or employer. This Act, it will be observed, says nothing about the appointment of the clerk or servant. The two material facts are, that the prisoner should be a "clerk or servant," and that he should embezzle the money received by him "on the account of his master or employer." Now it may well be that one person or body of persons may have the appointment of a clerk or servant, and yet when he is appointed he becomes, not the servant of those who appointed him, but the servant of those whose affairs he has to manage and whose money he has to receive and pay over according to their instructions. It was upon this ground that in the cases of *Reg. v. Watts* (7 A. & E. 461) and *Reg. v. Carpenter* (L. Rep, 1 C. C. R. 29) an assistant overseer was held to be the servant, not of the magistrates who appointed him, nor of the overseers, but the servant of the inhabitants of the parish whose affairs he had to manage and whose money he had to receive. Now it seems that, notwithstanding the parish council under the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 5 (1) have the power and duty of appointing and revoking the appointment of assistant overseers, their duties when appointed are the same as they were when they were elected and nominated by the vestry and appointed by the justices. The rates collected, the persons from whom and the purposes for which they are collected remain as before, and the money can in no sense be called the money of the parish council, nor can that council direct how it shall be dealt with. It would seem, therefore, that the prisoner was "employed" to collect the rates for the inhabitants of the parish, and that he received the money on their account and was accountable to them for it and not to the parish council, and therefore in the indictment under consideration he was properly described as "being in the employment as servant of the inhabitants of the parish," and as having received "whilst so employed" money "on the account of the said inhabitants, his employers." It may be said that this conclusion is inconsistent with the language of



sect. 81 (3), which declares that an existing assistant overseer, unless appointed by a board of guardians, shall "become an officer of the parish council." In one sense, as the parish council appoint and revoke the appointment of assistant overseers, they are officers of the council, but they may not the less, in so far as the receiving and holding of money collected as rates, be the servants of and employed by the inhabitants, especially when it is clear that with respect to the discharge of their duties the council could not give any orders or directions, having no interest in their proper discharge. The object and effect of the Parish Council Act, *quoad* the assistant overseers, is to place the council in the position formerly occupied by the inhabitants of the parish in vestry assembled, whilst it leaves the duties and employments of the assistant overseer the same as they were before that Act was passed. The description in the indictment therefore is correct, and the conviction must be affirmed.

HAWKINS, J.—I entirely concur in the judgment of my brother Pollock which I have just delivered. There can be no doubt that the money received by the assistant overseer in respect of the poor rates is not the money of the parish council, and no action could be maintained by or against the parish council in respect of it. It is money which it is the duty of the assistant overseer to pay over to the overseers for distribution by them on behalf of the inhabitants of the parish for which they are appointed. For the purposes of such an indictment as this, the money is properly described as the money of such inhabitants. If the contention of the prisoner's counsel were correct, it would seem to follow that no prosecution under the statute 24 & 25 Vict. c. 96, s. 68 for embezzlement of rates by an assistant overseer appointed by a parish council could be sustained, for that section only makes it embezzlement for a clerk or servant to embezzle money received in the name or on account of his master or employer, and if the parish council is to be considered as the master or employer of the assistant overseer, and the money said to be embezzled is not received in the name or on account of the council, but on the account of the inhabitants of the parish, the requirements of the statute to constitute the crime of embezzlement would not be fulfilled, for the clerk or servant of the one body would have received money belonging to and on account of the other. It may be that for some purposes the assistant overseer may be the servant of the parish council, but for the purpose of collecting the poor rates he is the servant of the inhabitants whose money he collects.

GRANTHAM, J.—In my judgment this conviction must be confirmed. The only doubt that has arisen in this case has been caused by the appointment of assistant overseer being now transferred by the Local Government Act, 1894 (56 & 57 Vict. c. 73) from the vestry of the parish and the local justices of the peace to the parish council. It is alleged that, in consequence of that transfer of the power of appointment, the assistant overseer

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ceases to be the servant of the inhabitants of the parish, and becomes the servant of the parish council. To make that construction logical, it must be also contended that the money in the hands of the assistant overseer is the money of the parish council, and not the money of the inhabitants of the parish; but an examination of the Local Government Act, 1894, will show, I think conclusively, that neither contention is valid. To determine the question properly, it is necessary to see what were and are the duties of the assistant overseer, by whom he was appointed, and the position of the parish council in reference to him and the parish it represents. The office of assistant overseer is comparatively a modern appointment, for, though overseers were appointed by the statute of Elizabeth (43 Eliz. c. 2)—which is the foundation of all our poor law system—yet assistant overseers were not appointed till 59 Geo. 3, c. 12. His duties were practically the same that those of overseers had been, viz., to assess the poor rate on the inhabitants of the parish, to collect the money from them, and then to pay it over to the persons authorised to receive it (now the guardians of the union in which the parish is situated). The chief difference between the position of the overseers and the assistant overseer being this, that the first were not paid for their services, whereas the assistant overseer was paid a salary, which salary was included in the amount required to be raised, and he became therefore a servant to those who were his employers, and the money in his hands was the money also of his employers, *i.e.*, those on whose behalf he had collected it. On whose behalf was it then collected? Not of the overseer to whom he was assistant, but of the persons to whom it will belong after collection, and whose liability to pay the particular amount so collected did not cease until it was paid over by him on their behalf, viz., on behalf of the inhabitants of the parish. That being his position and those being his duties, let us see how he was appointed. He was appointed, or rather selected, by the vestry of the parish, the vestry being the only corporate representation of a parish at that time, and he was then on that nomination appointed by the justices of the peace for the division in which the parish was situated. But that system of appointment did not make him the servant of the overseers any more than the servant of the justices, and the cases of *Reg. v. Sampson* (1 C. C. C. 355) and *Reg. v. Carpenter* (L. Rep. 1 C. C. R. 29) are distinct authorities for saying that the assistant overseer was not the servant of the overseers, but was the servant of the inhabitants on whose behalf he received the money of the ratepayers or inhabitants of the parish. That being, I think, a correct description of his duties, and the way in which he was appointed, let us next turn to the position of the parish council, and see whether the Local Government Act, 1894, has in any way altered the position of the assistant overseer to the inhabitants of the parish, though it may have altered the machinery by which he is elected to or confirmed in his post. By that Act the

power of the vestry to nominate or select him, and the power of the justices to appoint him, is taken away, and in lieu of that method of dual appointment, the appointment is to be at once made by the county council. But that seems to me to be the beginning and end of the changes in his position to the inhabitants of the parish. If he ceased to be their servant in collecting their money, it would be because he was collecting their money for someone else, viz., the parish council; but the parish council have no interest in or control over the money he collects. He makes no return to them, and they cannot control one single penny that he collects, and although he often, nay generally, is clerk to the parish council, because it is convenient and economical that he should be, yet he need not be so appointed, but, if he is appointed, the duties and position of clerk are quite independent of his position as assistant overseer, and the salary for such duties is independent of and in excess of what he gets as assistant overseer. It must not be forgotten that the parish council has practically no power over the finance of the parish, and has to apply to the clerk to the guardians or rural district council for a grant to enable them to pay the expenses incurred by it. It may be that, as sect. 81 (3) of the Local Government Act, 1894 (56 & 57 Vict. c. 73) says, he shall (except as therein mentioned) become an officer of the parish council, he might be correctly so described in an indictment; but on that I give no opinion, as it is not before us, and it does not in any way affect the question we have to determine, viz., whether he is still the servant of the inhabitants of the parish.

LAWRANCE, J. concurred.

*Conviction affirmed.*

Solicitor for the prosecution, *Solicitor to the Treasury.*

Solicitor for the defendant, *M. L. B. Braund*, for *Hebb*, Ross.

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## QUEEN'S BENCH DIVISION.

*Tuesday, Nov. 10, 1896.*

(Before GRANTHAM and WRIGHT, JJ.)

*Ex parte* KIPPINS. (a)

*Hackney carriage—Railway station—Refusal by cab-driver to drive into—“Place” within limits of Act—London Hackney Carriage Act, 1853 (16 & 17 Vict. c. 33), s. 17, sub-sect. 2.*

(a) Reported by W. W. ORR, Esq., Barrister-at-Law.

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Hackney  
carriage—  
"Place"  
within limits  
of Act—  
Railway  
station—  
Refusal to  
drive into—  
London  
Hackney  
Carriage Act,  
1853—16 & 17  
Vict. c. 33,  
s. 17 (2).

*A railway station is a "place" within the meaning of sect. 17 of the London Hackney Carriage Act, 1853, which imposes a penalty upon the driver of any hackney carriage who refuses to drive any person hiring or intending to hire such carriage to any "place within the limits of the Act," and the driver who refuses to drive such person into a railway station within the limits of the Act, incurs the penalty imposed by the section.*

**A**PPPLICATION for a rule for a *mandamus* to Mr. Curtis Bennett, metropolitan police magistrate, sitting at Marylebone Police Court, commanding him to state a case for the opinion of the High Court.

An information was preferred against Joshua Kippins, the driver of a hackney carriage, charging that he, the defendant, on the 29th day of October, 1896, did in a certain thoroughfare, to wit, Drummond-street, within the Metropolitan Police district, unlawfully refuse to drive a person hiring such carriage to a certain place within the limits of the London Hackney Carriage Act, 1853, to wit Euston station.

Upon the hearing of this summons, on the 31st day of October, the following facts were proved :

On the 29th day of October, the complainant engaged the defendant at a cabstanding in Chalk Farm, and told him to drive to Euston station. The defendant drove from the standing to the gates of Euston station, and was then requested by the complainant to go inside the station. The defendant refused to go inside the station, although one of the company's servants, who was present at the time, told the defendant that he was at liberty to do so. The complainant then got out of the cab without the defendant having gone into the station. The place to which the defendant drove was close to the Euston station gates, and within about three feet of the land claimed by the railway company as their private property.

The London Hackney Carriage Act, 1853 (16 & 17 Vict. c. 33), provides :

Sect. 17. The driver of any hackney carriage who shall commit any of the following offences within the limits of this Act shall be liable to a penalty not exceeding forty shillings for each offence, or in default of payment to imprisonment for any time not exceeding one calendar month; (2) Every driver of a hackney carriage who shall refuse to drive such carriage to any place within the limits of this Act, not exceeding six miles, to which he shall be required to drive any person hiring or intending to hire such carriage, &c.

On behalf of the defendant it was contended before the magistrate that the railway station, being the private property of the railway company, was not a "place" within the meaning of the above section, and that no offence had therefore been committed. The learned magistrate overruled this objection, and convicted the defendant, and fined him 40s. and costs, and, in default of payment, one month's imprisonment. He also refused to state a case as to whether the railway station was a "place" within the

meaning of the section, and the present application for a rule for a *mandamus* to the magistrate was then made.

*Roskill* in support of the application.—The question is, whether the railway station is a “place” within the meaning of the Act. I submit that it is not, because it is the private property of the railway company, and also because it is a place to which the public have no right of access, and in which cabs cannot ply for hire. It is, therefore, not a “place” within the limits of the Act: (*Case v. Storey*, 20 L. T. Rep. 618; L. Rep. 4 Ex. 319; *Skinner v. Usher*, 26 L. T. Rep. 430; L. Rep. 7 Q. B. 423).

GRANTHAM, J.—I am of opinion that no rule should be granted in this case, as the point is quite clear. The cases which have been cited to show that a railway station is not a “place” were decided upon other statutes. In *Case v. Storey* (*ubi sup.*), decided in 1869, the question that arose was, whether a hackney carriage, whilst on the premises of a railway company by their licence for the accommodation of passengers by their trains, was plying for hire in “any street or place” within the meaning of sect. 35 of the Act 1 & 2 Will. 4, c. 22, and the Court there held that the words “street or place” in sect. 35 must be read with reference to sect. 4, namely, plying for hire in any “public street or road,” and that a railway station could not be said to be a public street or road, and was therefore not a street or place within the meaning of the 35th section. Then, in 1871, came the case of *Clarke v. Stanford* (24 L. T. Rep. 389; L. Rep. 6 Q. B. 357), which is a direct authority against this application. There it was held that a hackney carriage on the premises of a railway company for the conveyance of any passenger by the railway was “plying for hire within the limits of the Act.” Cockburn, C.J. there said: “Where a person has a carriage ready for the conveyance of passengers in a place frequented by the public he is plying for hire, although the place is private property. That shows that a railway station, as it is frequented by the public, is a ‘place’ within the meaning of these Acts, although the place is private property. The public is entitled to travel by the railway, and has a right to pass over the premises of the railway to get out, and if a man is standing on those premises with his carriage to take the public, he is plying for hire.” The Legislature has omitted the words “public place,” and this appears to have been done intentionally and advisedly. Here also, in sub-sect. 2 of sect. 17, the Legislature has omitted the word “public” before the word “place.” It seems to me, therefore, on the authority of *Clarke v. Stanford* (*ubi sup.*), that a railway station is a “place” within the meaning of this Act, and that the driver of a hackney carriage who refuses to drive to any such place incurs the penalty imposed by sect. 17. The case of *Skinner v. Usher* (*ubi sup.*), decided in 1872, was also cited in support of the application. That case was decided on the words in sect. 33 of the 6 & 7 Vict. c. 86, which imposed a penalty upon any driver of a hackney carriage “who shall ply for hire elsewhere than at

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KIPPING.

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“Place”  
*within limits*  
*of Act—*  
*Railway*  
*station—*  
*Refusal to*  
*drive into—*  
*London*  
*Hackney*  
*Carriage Act,*  
1858—16 & 17  
Vict. c. 33,  
s. 17 (2).

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*Hackney*  
*carriage—*  
*“Place”*  
*within limits*  
*of Act—*  
*Railway*  
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*Refusal to*  
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*London*  
*Hackney*  
*Carriage Act,*  
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Vict. c. 33,  
s. 17 (2).

some standing or place appointed for that purpose.” The reason of the decision there was that, as the two Acts—1 & 2 Will. 4, c. 22, and 6 & 7 Vict. c. 86—were to be read together, the same interpretation must be put on sect. 33 of the later Act as was put upon sect. 35 of the earlier Act. That reason does not apply here, where the point is different. Leaving aside the cases cited in support of the application, which have no bearing on the point, and looking at *Clarke v. Stanford* (*ubi sup.*), it is clear that Euston station, although the private property of the railway company, is a “place” within the meaning of this Act. The magistrate was, therefore, perfectly right in his decision, and there is no ground for ordering him to state a case.

WRIGHT, J.—I am of the same opinion. No case has been cited to us to show that the language of this section ought to be cut down in the way suggested. If the section were to be so limited it would lead to the most unreasonable result that a cab-driver could not be compelled to drive into a railway station if required to do so. The principle seems to me to be that a cab-driver must drive to any place to which he is ordered if it be a place to which he can gain admittance.

*Application refused.*

Solicitors for the applicant, *Pattinson and Brewer.*

## QUEEN'S BENCH DIVISION.

*Monday, Nov. 2, 1896.*

(Before GRANTHAM and WRIGHT, JJ.)

FOWLE *v.* FOWLE. (*a*)

*Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 6—*  
*Adulteration—“Drug”—Beeswax.*

*In a prosecution, under sect. 6 of the Sale of Food and Drugs Act, 1875, of a grocer for selling beeswax adulterated by being mixed with paraffin ;*

*Held, that beeswax, so sold, was not a drug.*

CASE stated by justices of Cranbrook.

The respondent was charged under sect. 6 of the Sale of Food

(*a*) Reported by G. H. GRANT, Esq., Barrister-at-Law.

and Drugs Act, 1876, with having sold to the prejudice of the purchaser a drug, viz., beeswax, which was not of the nature, substance, and quality of the article demanded.

The respondent was a grocer at Marden, in Kent, and the appellant, an inspector for the purposes of the Act, entered the respondent's shop and asked for a pound of beeswax. The respondent supplied the beeswax, which was found upon analysis to be adulterated with paraffin to the extent of 50 per cent. The justices held that beeswax was not a drug within the meaning of the section, and dismissed the summons. The inspector appealed.

*T. Mathew* for the appellant.—By sect. 2 of the Act the term “drug” shall include medicine for internal or external use. The test of an article being a medicine is its being found in the British Pharmacopœia, and beeswax is found there. It is immaterial that the seller was a grocer, for the section provides that “no person shall sell,” &c.

No counsel appeared on behalf of the respondent.

GRANTHAM, J.—In my opinion the justices were right. Speaking for myself I am not prepared to admit that beeswax as sold by a grocer can be a drug, although possibly by going through dictionaries a definition might be found of the word “drug” which would include beeswax. The article was sold by a grocer who buys and does not make it. The principle use of beeswax used to be to polish tables, and if it be ever used, as is contended, in the preparation of medicines, certainly most of its uses are not medicinal.

WRIGHT, J.—I am of the same opinion, and I rest my judgment on the ground that it may be a question of fact whether in a particular case an article is a drug, and the justices have rightly decided that in this case beeswax is not. Take the case of turpentine or resin, both of which are used in preparation of medicines. But resin if sold for use on the bow of a fiddle would not be a drug. Far more important is the question whether the seller would escape liability by informing the buyer that the article was not pure. I do not decide that now, but I may say that this case is not like *Sandys v. Small* (3 Q. B. Div. 449).

Solicitors for the appellant, *Warner and Turner*, Tonbridge.

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c. 63, s. 6.



## QUEEN'S BENCH DIVISION.

*Wednesday, Dec. 9, 1896.*

(Before WILLS and WRIGHT, JJ.)

UMFREVILLE (app.) v. THE LONDON COUNTY COUNCIL (resps.) (a)

*Public Health (London) Act, 1891—Farmer keeping cows on his premises — “Cowkeeper” — Licence from County Council — 54 & 55 Vict. c. 76, ss. 20, 141.*

*A person who, being the occupier of a farm within the county of London, keeps upon his premises cows, the milk of which is used, not for sale, but for fattening calves, is not a “cow-keeper” within sect. 141, and therefore not a “dairyman” within sect. 20 of the Public Health (London) Act, 1891, and, consequently, does not require a licence from the London County Council for the keeping of such cows.*

CASE stated by the metropolitan police magistrate sitting at the Greenwich Police-court.

On the 16th day of May, 1896, an information was laid before the magistrate on behalf of the respondents, that the appellant on the 21st day of April, 1896, being a person carrying on the trade of a dairyman, did unlawfully use certain premises at Joy Farm, Brockley, in the county of London, and within the metropolitan police district, as a cow-house without a licence from the respondents, contrary to the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76).

At the hearing of the information the following facts were either proved or admitted :

The appellant, at the date of the alleged offence, lived at and was the occupier of the premises known as the Joy Farm, Brockley, which are in the parish of Lewisham and county of London, and within the Metropolitan Police district, and was keeping, on a part of the premises which was fitted up as a cow-house, three cows, five heifers, a young bull, and three calves. Three of the cows were in full milk. The appellant did not sell the milk, but was using it to rear up and fatten calves for sale to butchers. The premises in question had formerly been licensed by the respondents as a cowhouse or place for the keeping of cows, pursuant to sect. 20 of the Public Health (London) Act, 1891, but in October, 1894, the respondents

(a) Reported by W. W. ORR, Esq., Barrister-at-Law.

refused to renew the licence, and the premises thereafter ceased to be licensed, and at the date of the alleged offence were not licensed under sect. 20.

The appellant contended that inasmuch as he did not sell milk, he was not carrying on the business of a dairyman within the meaning of sect. 20.

The respondents contended that inasmuch as the appellant was carrying on the business of a cowkeeper, and was keeping cows in the course of his business, an offence within sect. 20 had been committed.

The learned magistrate was of opinion that the appellant was carrying on the business of a dairyman within the meaning of sect. 20, inasmuch as he was a cowkeeper within sect. 141, and therefore a dairyman within the meaning of the Act, and he convicted the appellant, and fined him 5s. and 2s. costs.

The question for the opinion of the Court was, whether upon the above facts the decision was right in point of law.

The Public Health (London) Act, 1891 (54 & 55 Vict. c. 76) provides :

Sect. 20. A person carrying on the business of a slaughterer of cattle or horses, knacker, or dairyman, shall not use any premises in London (outside the city of London) as a slaughter-house, or knacker's yard, or a cowhouse or place for the keeping of cows, without a licence from the County Council, and if he does he shall for each offence be liable to a fine not exceeding 5*l.*, and the fact that cattle have been taken into unlicensed premises shall be *prima facie* evidence that an offence under this section has been committed.

Sect. 141. In this Act, unless the context otherwise requires,

The expression "dairy" includes any farm, farmhouse, cowshed, milk-store, milk-shop, or other place from which milk is supplied, or in which milk is kept for the purposes of sale;

The expression "dairyman" includes any cowkeeper, purveyor of milk, or occupier of a dairy.

*The appellant in person.*—The magistrate was wrong in convicting under the circumstances of this case. No business or trade was carried on here within the meaning of sect. 20. Under sect. 141 the expression "cattle" includes sheep, goats, and swine, and if the County Council were right in their contention, no person could, within the limits of the Act, keep a cow or sheep for his own use without being a cowkeeper, and therefore a dairyman within the meaning of sect. 20, so as to require a licence under that section. The Act of Parliament could not have contemplated that result.

*Daldy* for the respondents.—The magistrate had found as a fact that this place was used for keeping cows; the appellant was therefore a cowkeeper, and being a cowkeeper he came, by sect. 141, within the expression "dairyman," and therefore within sect. 20 as a dairyman. [WRIGHT, J.—He is not a cowkeeper; he is a farmer, and to support this judgment you must put it as high as this, that every farmer who keeps a cow must have a licence from the County Council to keep a cow.] Sect. 20 is a repetition of sect. 93 of the Metropolis Management Amendment Act, 1862, except that the words in that section were "cowkeeper or

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*Local Govern-  
ment—"Cow-  
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ing cows—  
Public Health  
(London) Act,  
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dairyman," whereas the word in the present section (sect. 20) is "dairyman" simply, the word "cowkeeper" being omitted. So, sect. 28 of the present Act was analogous to sect. 34 of the Contagious Diseases (Animals) Act, 1878, the words there being "the trade of cowkeepers or dairymen," whereas in the present Act the words are simply "the trade of dairymen." These provisions were repealed, but they showed that the phrases "cowkeepers" and "dairymen" were interchangeable, and the provisions as to "cowkeepers and dairymen" are now all included in this compendious Act under the term "dairymen."

WILLS, J.—I am of opinion that this appeal must succeed. No offence is committed under the section, so far as this question is concerned, unless the person carries on the business of a cowkeeper. I find in a dictionary what seems to me to be a very good definition of "cowkeeper," namely, one whose business it is to keep cows, and if the appellant's business was that of keeping cows, he would be within the Act. But his business seems to me to be that of a farmer and nothing else. Now unless the Act is to be read as saying, that any farmer, who, as an incident in the occupation of his farm, keeps cows, is within the Act, then the appellant is without the Act, and not within it. In my opinion the Act was never intended to have so wide an application as that. The business of a farmer is a perfectly well-known one, and there is no difficulty, or danger to the public, in construing the Act as I have indicated. There are other provisions in the Act which amply protect the public, as far as legislation can do so, from the distribution of unwholesome milk, supposing that the sale of milk is part of the farmer's business, though he be a farmer. There are also ample provisions for protecting the public in case a farmer's farm premises are so managed as to be a nuisance and dangerous to health. With regard to the carrying on of the business of a cowkeeper, we all know what that means. It is a special business of its own. Of course if that business is carried on by itself, it is a totally different thing from having cows which may occupy people in the daytime, but which is a mere incident in the carrying on of the business of a farmer. In the one case the person does carry on the business of a cowkeeper, but in the other case he carries on, not the business of a cowkeeper but the business of a farmer, which is a very different thing. In my judgment the appeal must succeed, and with costs.

WRIGHT, J.—I agree, and I may add, that the construction put upon the Act by my learned brother is strengthened by the words in sect. 141, amongst which the word "cowkeeper" is used, namely, "dairyman" includes cowkeeper, purveyor of milk, or keeper of a dairy.

*Appeal allowed.*

Solicitor for the respondents, *W. A. Blaxland.*

## QUEEN'S BENCH DIVISION.

*Friday, Dec. 11, 1896.*

(Before WILLS and WRIGHT, JJ.)

MANTLE (app.) v. JORDAN (resp.)

*Local Government—County council—Bye-law—Use of obscene language in dwelling-house abutting on public street—Validity—Local Government Act, 1888, (51 & 52 Vict. c. 41) s. 16; Municipal Corporations Act, 1882, (45 & 46 Vict. c. 50), s. 23.*

*A county council, under the powers conferred by sect. 16 of the Local Government Act, 1888, to make bye-laws for "the good rule and government" of the county, made a bye-law prohibiting, under a penalty, any person from using in any house, building, garden, or other place abutting on or near to a street or public place, any violent, profane or obscene language to the annoyance of any person in such street or public place.*

*Held, that the bye-law was one which could properly be made for "the good rule and government" of the county, and was valid; and that therefore a man who had used obscene language in his dwelling-house, in a room abutting upon, and the door of which opened into the public street, to the annoyance of various persons in such street, ought to have been convicted under the bye-law.*

CASE stated by four justices of the peace, acting for the Market Bosworth Petty Sessional Division of the county of Leicester.

At a petty sessions holden at Hinckley, on the 9th July, 1896, an information was preferred by the appellant, an inspector in the Leicestershire police force, against the respondent, for that he, the respondent, on the 16th day of May, 1896, at Barwell in the county of Leicester, did unlawfully use certain indecent and obscene language in "his dwelling-house abutting upon and in a certain public street, called Chapel-street, against the bye-laws for the good rule and government of the said county of Leicester."

This information was heard, determined, and dismissed by the justices.

It was proved on the part of the appellant, and found as a fact, that the respondent did on the day in question, at Barwell aforesaid, use certain indecent and obscene language in his dwelling-house in a room abutting upon, and the door of which opened

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guage in  
house abutting  
on streets—  
45 & 46 Vict.  
c. 50, s. 23;  
51 & 52 Vict.  
c. 41, s. 16.

into, and was at the time of the alleged offence open to a certain public street, called Chapel-street, to the annoyance of a large number of persons then in such street.

The bye-laws in question were bye-laws “for the good rule and government” of the county of Leicester made on the 6th day of November, 1895, and approved by Her Majesty’s Secretary of State.

No. 7 of such bye-laws is as follows :

No person shall in any house, building, garden, land, or other place abutting on or near to a street or public place, make use of any violent, abusive, profane, indecent, or obscene language, gesture, or conduct, to the annoyance of any person in such street or public place.

On behalf of the appellant it was contended that the Leicester-shire County Court had full power, under sect. 16 of the Local Government Act, 1888, to make the bye-law.

The respondent appeared in person before the justices and defended the case. He called no witnesses, and practically did not dispute the facts, but stated in defence that he “was only having a few words with his wife, and committed no breach of any bye-law in the public street.”

The justices considered, that having regard to the fact that sect. 187 of the Public Health Act, 1875 is made applicable to the said bye-laws by sect. 16 of the Local Government Act, 1888, and that the same section of the Public Health Act made all the provisions of that Act relating to bye-laws applicable, thus incorporating sect. 182 of the same Act, by which it is provided that no bye-law “shall be of any effect if repugnant to the laws of England, or to the provisions of this Act,” and having regard also to the fact that the provisions of the Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89), with respect (*inter alia*) to obstructions and nuisances in the streets, are, by sect. 171 of the Public Health Act, 1875, incorporated with that Act, and that sect. 28 of the Town Police Clauses Act does not extend to an offence similar to that charged in the information in the present case, committed elsewhere than in a street, and makes no mention of houses or land adjacent thereto, it was doubtful if the county council had any power to make the bye-law in question, and in support of this position they relied on the decision of *Strickland v. Hayes* (74 L. T. Rep. 137; (1896) 1 Q. B. 290), and especially on the judgment of Lindley, L.J. in that case, and they also referred to the judgment of Lord Russell, C.J., in the subsequent case of *Burnett v. Berry* (74 L. T. Rep. 494; (1896) 1 Q. B. 641), in which he criticised the judgment of Lindley, L.J. in the former case.

The justices, although they were of opinion that the facts proved would be ample to justify a conviction under the bye-law, if the bye-law were valid, did not think it right to convict the respondent, inasmuch as they entertained a doubt as to the validity of the bye-law.

The question for the opinion of the Court was, whether the

bye-law, under which the information was laid, was and is *ultra vires*, unreasonable and repugnant to the general law of the land, or the provisions of the Public Health Act, 1875, and therefore invalid.

By sect. 16 of the Local Government Act, 1888 (51 & 52 Vict. c. 41) :

A county council shall have the same power of making bye-laws in relation to their county . . . as the council of a borough have of making bye-laws in relation to their borough, under sect. 23 of the Municipal Corporations Act, 1892, and sect. 187 of the Public Health Act, 1875, shall apply to such bye-laws.

By sect. 23 (1) of the Municipals Corporations Act, 1882 (45 & 46 Vict. c. 50) :

The council may, from time to time, make such bye-laws as to them seem meet for the good rule and government of the borough, and for prevention and suppression of nuisances not already punishable in a summary manner, by virtue of any Act in force throughout the borough, and may thereby appoint such fines, not exceeding in any case 5*l.*, as they deem necessary, for the prevention and suppression of offences against the same.

*Toller* for the appellant.—By sect. 16 of the Local Government Act, 1888, a county council has the same power to make bye-laws as a borough council under the Municipal Corporations Act, 1882 ; and by sect. 23, sub-sect. 1 of the latter Act, a borough council has power to make bye-laws “for the good rule and government of the borough,” and “suppression of nuisances.” The question, therefore, now was whether this bye-law was one that could properly be made “for the good rule and government of the county,” as well as for the “suppression of nuisances” within the county, or whether it was *ultra vires*. He submitted that the bye-law was good and not *ultra vires*. The case was wholly different from *Strickland v. Hayes* (74 L. T. Rep. 137 ; (1896) 1 Q. B. 290), upon which the justices seemed to have based their decision. In that case there were no words in the bye-law that the act should be done to the “annoyance of any person,” as there were in the present case, and that circumstance completely distinguished the two cases. The present case fell within the decisions in *Teale v. Harris* (13 Times L. Rep. 15) and *Burnett v. Berry* (74 L. T. Rep. 494 ; (1896) 1 Q. B. 641). He also referred to the definition of a “common nuisance,” in Hale’s “Pleas of the Crown.”

The respondent did not appear.

WILLS, J.—I am of opinion that this appeal must succeed. I think this was an offence against good rule and government, and I think also that it was a nuisance. The county council had power to make bye-laws “for the good rule and government” of the county, and also for the suppression of nuisances.” I think this bye-law can be supported on both grounds. The case, therefore, must go back to the magistrate to convict.

WRIGHT, J.—I agree.

*Appeal allowed ; Case remitted.*

Solicitors for the appellant, *Field, Roscoe, and Co.*, for *Freer*, Leicester.

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c. 50, s. 23 ;  
51 & 52 Vict.  
c. 41, s. 16.



## CENTRAL CRIMINAL COURT.

*Thursday, Jan. 14, 1897.*

(Before HAWKINS, J.)

REG. v. SMITH. (a)

*Evidence—Statement made by deceased person in prisoner's presence—When admissible.*

*A mere statement, not amounting to a dying declaration, made by a deceased person in the presence of an accused person, ought not to be admitted as evidence against such accused unless it is accompanied by evidence which would justify the jury in finding that such statement was made upon an occasion when the accused had an opportunity of answering, and might reasonably be expected to answer it, and in drawing an inference from his omitting to deny or question it, or from his language or demeanour that he did not dissent from the truth of it.*

*The question whether there is any such evidence for the consideration of the jury is for the Court to decide. If the Court thinks there is such evidence the weight of it and the inference to be drawn from it is for the jury to determine.*

THE defendant was indicted under 24 & 25 Vict. c. 100, s. 58 for feloniously and unlawfully using means with intent to procure the miscarriage of a girl named Constance Fletcher.

In the course of the case the following facts were proved :

On the 28th day of November, 1896, about 4.10 p.m., an inspector of the metropolitan police went to the residence of Constance Fletcher, who was then ill in bed. There, in the presence of her mother and sister, the inspector took a statement from her which he reduced into writing. The same night, about eleven o'clock, he returned with another inspector of police and the prisoner.

In the presence of the prisoner questions were put by the police to the girl, who was then in a very critical condition. Those questions, together with the answers given by her, were then and there reduced into writing.

The prisoner, after hearing these answers, said, "That is not true."

The girl died shortly afterwards, within an hour or so.

(a) Reported by ARTHUR E. GILL, Esq., Barrister-at-Law.

It was not and could not be contended on behalf of the prosecution that either of the statements of the deceased so reduced into writing was admissible as a dying declaration, nor that it was part of the *res gestæ*.

*Mathews* and *Avory*, for the prosecution, proposed to read in evidence against the accused the statement containing the questions and the answers of the deceased girl made in the prisoner's presence.

HAWKINS, J.—For what purpose?

*Avory*.—As evidence of a statement made in the presence of the prisoner.

HAWKINS, J.—That *per se* is not sufficient.

*Avory*.—Any statement made in the presence of a prisoner is evidence against him.

HAWKINS, J.—No. It is not so. The statement if made in his absence would clearly not be evidence against him of the facts contained in it. It makes no difference that it was made in his presence unless evidence could be adduced which would justify the jury in finding that the prisoner, having heard the statement and having the opportunity of explaining or denying it, and the occasion being one upon which he might reasonably be expected to make some observation, explanation, or denial, by his silence, his conduct, or demeanour, or by the character of any observations or explanations he thought fit to make, substantially admitted the truth of the whole or some portion of it. Whether the evidence offered for this purpose in this or in analogous cases would justify the jury in so finding or in drawing such inference is a question for the judge to determine before he admits the evidence. If he thinks there is such evidence, he ought to allow the statement with that evidence to be submitted to the jury, with a direction that, if they come to the conclusion that the prisoner had so admitted the truth of the whole or any part of it, they might take the statement, or so much of it as they thought was admitted (but no more), into consideration as evidence in the case generally; not because the statement standing alone afforded any evidence of the matters contained in it, but solely because of the prisoner's admission of its truth; but, unless they found as a fact that there was such admission, they ought to disregard the statement altogether. If on the other hand the judge is of opinion that there is no such evidence which would justify the jury in arriving at such a conclusion he ought not to allow the statement to be read or communicated to them. This is the true test to be applied in considering whether a statement made in the presence of an accused person, other than a dying declaration, or a statutory deposition, is allowable or not allowable against him as evidence of the truth of its contents: see *Reg. v. Lillyman* (1897), 2 Q. B. 167.

*Avory*.—I submit that the statement is admissible even if the prisoner clearly dissents from it.

HAWKINS, J.—In my opinion it is not so. How can a simple,

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emphatic and distinct denial be turned into an admission of the truth of the contents of a statement not otherwise admissible? To allow such a statement to be put in evidence, even though accompanied by evidence of the prisoner's denial of it, could not fail to be most unfairly prejudicial to him; for when once read as evidence, it would be extremely difficult, if not impossible, to prevent it from making an impression hostile to the prisoner, upon the minds of an ordinary jury. The death of the girl makes not the slightest difference.

*Avory.*—The question for the jury is what inference are they going to draw from the prisoner's conduct on hearing a certain statement made.

*HAWKINS, J.*—That would be a true proposition if there were in the opinion of the judge any evidence from which the jury would be justified in drawing the inference that he admitted the truth of the statement. If it were allowable without such evidence an accused prisoner might be grievously and unjustly prejudiced. This ought to be rendered impossible. Whether in this case there is any such evidence is for me to decide. I am of opinion there is not; and therefore for the reasons I have stated I ought not to allow the statement to be read.

*Mathews* admitted on the part of the prosecution that there was not sufficient evidence to go to the jury in support of the indictment if the statement of the deceased were excluded.

*Mulholland, Q.C.* and *Marshall Hall*, for the defence, were not called upon.

*HAWKINS, J.*—(In directing the jury to acquit the prisoner.)—Gentlemen, you have listened to the discussion as to the admissibility of the tendered statement; the objection to the evidence is not a mere technical one, and the view I have taken, must I think commend itself to you and to all fair minded persons. I will illustrate it very simply. If a man went into another's presence and addressing him said, "on such and such a day you robbed me of my purse and money," and the person so accused said "pray do not remind me of it any more, forgive me, I am sorry," that would be clear evidence from which a jury might well draw the inference that the accused admitted his guilt. On the other hand, if the accused replied, "this is an outrageously false and wicked accusation," no man in his senses could honestly construe that into an admission that he had committed the crime imputed to him. I entertain a very decided opinion that, before a bare statement made by another person in an accused person's presence and prejudicial to him is allowed to be used as evidence against him, there must be something, in the shape of action, conduct or words which, in the opinion of the judge, would justify the jury in drawing an inference that the accused substantially admitted the story told against him. Here the only thing that the prisoner said or did when the statement was made was to turn and say, "this is not true." I therefore refuse to allow the evidence to be submitted to you, and as there is admittedly no

other material evidence to affect the prisoner, your verdict must be one of acquittal.

*Verdict, Not Guilty.*

Solicitor for the prosecution, *The Solicitor to the Treasury.*

Solicitors for the defence, *Day, Russell and Co.*

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Admissibility  
—Statement  
by deceased  
person—  
Presence of  
prisoner.*

## QUEEN'S BENCH DIVISION.

*Saturday, Dec. 19, 1896.*

(Before HAWKINS, CAVE, WILLS, WRIGHT, and KENNEDY, JJ.)

BRADFORD (Commissioner of Police) (app.) v. DAWSON and PARKER  
(resps.) (a)

*Betting—Payment of lost bets in public-house—Bets made elsewhere—“Using house for purpose of betting with persons resorting thereto”—Knowingly “permitting” house to be so used—Betting Act, 1853 (16 & 17 Vict. c. 119), ss. 1, 3.*

*The mere payment of bets which have already been lost is not “betting” within the meaning of the Betting Act, 1853; and consequently, the habitual user by a professional bookmaker of the bar of a public-house for the purpose of meeting and paying to customers bets which had previously been made elsewhere and lost by him, is not a user of the place “for the purpose of betting with persons resorting thereto,” within the meaning of sect. 3 of the Act; and neither the bookmaker nor the licensee of premises, who knowingly permits his house to be so used, can be convicted under the section.*

CASE stated by Fenwick, metropolitan police magistrate sitting at Southwark Police-court.

The respondents appeared before the magistrate to answer respectively the charges in the following summonses under the Betting Act, 1853 (16 & 17 Vict. c. 119):

The respondent Dawson for “that he on the 8th, 9th, 12th, 13th, 14th, 15th, and 16th days of May, 1896 being a person using the “Duke’s Head” beerhouse, Pocock-street, Blackfriars, did use the same for the purpose of betting with persons resorting thereto contrary to sect. 3 of 16 & 17 Vict. c. 119;” and the respondent Parker for “that he on the 8th, 9th, 12th, 13th, 14th, 15th, and 16th days of May, 1896, being the occupier of the “Duke’s Head” beerhouse aforesaid, did knowingly and

(a) Reported by W. W. ORR, Esq., Barrister-at-Law.

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Betting—  
Losses paid in  
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—"Using  
house," &c.—  
"Knowingly  
permitting"  
—Betting  
Act, 1853—  
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c. 119, ss. 1, 3.

wilfully permit the same to be used by Dawson for the purpose of betting with persons resorting thereto, contrary to the same section of the 16 & 17 Vict. c. 119."

The following facts were proved before the magistrate :

The defendant Parker was at the date of the alleged offences the licensee and rated occupier of the "Duke's Head" beer-house, and had been since November, 1893. Parker resided on the premises, and with the assistance of his wife carried on the business of the beerhouse. Prior to November, 1893, the defendant Dawson was the licensee of the house; and the defendant Dawson carries on the business of a professional bookmaker.

It was proved to the satisfaction of the magistrate, that on the seven days mentioned in the summonses the defendant Dawson was at the "Duke's Head" beerhouse between the hours of 8 and 9 p.m., for the purpose of paying out to a number of persons who resorted to and came into the said house for the purpose, sums of money which they had won from Dawson on bets made by such persons on the result of horseraces.

The defendant Dawson with the cognisance and connivance of Parker always located himself in the private part of the bar at the corner of the counter close to a back room or parlour, which he was permitted by Parker to make use of at will. The habitual practice (which the magistrate found to have existed on the days mentioned in the summonses) was for the persons who had won bets, and who resorted to the house in considerable numbers for the purpose of obtaining payment of their bets, to present a slip of paper to the defendant Dawson, which they usually placed on the counter. Dawson would then look at the slip, step into the back room above referred to, come out again with another slip, and after comparing the two pay over to the person who had originally handed him the slip the sum of money which appeared to be due to such person. It was proved that the defendant Parker had full knowledge of the nature of the transactions carried out by the defendant Dawson.

No evidence was adduced on the part of prosecution showing the receipt by Dawson at the "Duke's Head" beerhouse of any slips of paper or money at the initial stage of the betting, neither was there any evidence to show when or where the agreements or contracts, in pursuance of which the said sums of money were paid over by Dawson as before stated, had been entered into and made; but the learned magistrate was satisfied that Dawson carried on the material part as above set forth of his business as a professional bookmaker in the "Duke's Head" beerhouse, and used the house to that extent for the purpose of his said business.

It was contended for the prosecution that the habitual user of the house by a professional bookmaker for the purpose of meeting customers with whom he had betting transactions by settling up with them any bets with regard to which they were winners, amounted to a user of the house contrary to the Betting

Act, 1853, and it was submitted that the paying out of bets was a most substantial and essential part of the transaction of betting, and in support of this contention the case of *Reg. v. Worton* (72 L. T. Rep. 29; (1895) 1 Q. B. 227) was referred to.

It was contended for the defendants that the transactions which it had been proved the defendant Dawson was a party to, could in no way be said to come within the section of the Act in question, and in support of this contention the case (amongst others) of *Davis v. Stephenson* (62 L. T. Rep. 436; 24 Q. B. Div. 529) was quoted.

The magistrate was of opinion that the facts above stated, as proved before him did not in point of law constitute the commission by Dawson of an offence against the Betting Act, 1853, and he dismissed the summons against him. With regard to the defendant Parker it was admitted by the prosecution that if the user by Dawson was not illegal the case against the licensee of the house failed also, and he therefore dismissed the summons against him.

The question for the opinion of the Court was whether the decision of the magistrate was right in law.

*Danckwerts* for the appellant.—The short point is as to the meaning of the words using a place for the purpose of betting with persons resorting thereto; in other words, whether the Betting Act of 1853 includes within its operation such cases as the present, where, although the bets themselves may not have been made upon the premises, they were actually paid upon the premises. The case finds that Dawson was a professional bookmaker, and that he habitually carried on in these premises a substantial part of his business as a bookmaker, and that he did so with the knowledge and connivance of the respondent Parker. The case turns on the construction of sects. 1 and 3 of the Act, and under these sections the magistrate held that the house was not used in contravention of the Act, and could not be so used unless betting was carried on in it. If this decision is right it will considerably narrow the operation of the Act. [HAWKINS, J.—No part of the wagering contract was made in the house; the contract of wagering was complete, the event was over, and nothing remained but to pay over the money.] The point was that the transaction of betting is one which covers both the making of the bet itself and the whole carrying out of the operation of betting, and the object of the Act was to render liable to the penalty persons who use the place for the purpose of betting. [HAWKINS, J.—Can you say that paying a bet is betting?] Paying a bet is a part, and a most important part, of the business of betting, and the respondent here was carrying on a material portion of his betting business in this house. The section was drawn in general terms for the purpose of covering as wide an area as possible. A person uses a place for betting, when using it for the purpose of receiving or paying bets, won or lost. The injury to the improvident person—referred to in the preamble—is

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the paying of the bet lost by him, and the mischief is the same wherever the bet is made. [HAWKINS, J.—Where is there a syllable in the Act which says that the paying of bets which had already been lost comes within sect. 3.] There is no direct statement to that effect, but the Act is directed against the whole business of betting of which the payment of the bets is a material part.

*Bigham, Q.C. (J. P. Grain with him) for the respondent Dawson.*—The point was a simple one. The object aimed at by the Act was betting, and here there was no betting at all, but the mere payment of bets which had been made elsewhere. [He was stopped.]

*L. W. Kershaw for the respondent Parker.*

HAWKINS, J.—I am of opinion that this appeal must be dismissed. The offence charged against the respondent Dawson was alleged to have been committed under sect. 3 of the Act. Dawson made bets with various persons, and he used this house, which was kept by the respondent Parker, for the payment of the bets which had already been made by him and lost. Under these circumstances the question which arises here is whether paying the debts which had already been made—whether paying the money lost—comes within the section. I cannot read sects. 1 and 3 without unhesitatingly coming to the conclusion that this was not a betting within those sections. It is quite true that the paying of a bet may be an important part of the transaction, but it does not follow that the paying of a bet is "betting" within the meaning of these sections. My opinion is that—the bet being over—the mere fact of paying it afterwards does not come within the Act. I think, therefore, that this appeal must be dismissed.

CAVE, J.—I am of the same opinion. It is clear that when you are paying a bet already lost you are not betting any more than when you are paying for a quantity of wool, say, previously bought, you are buying the wool.

WILLS, J.—I am of the same opinion.

WRIGHT, J.—I confess I had some doubt in the matter. It seemed to me that sect. 3 was intended to strike at betting transactions altogether; but as this is a penal Act it ought to be construed strictly, and I do not think it necessary to dissent from the judgments already given.

KENNEDY, J.—I am of the same opinion.

*Appeal dismissed.*

Solicitors for the appellant, *Wontner and Sons.*

Solicitor for the respondent, *Charles Butcher.*

## QUEEN'S BENCH DIVISION.

*Saturday, Dec. 12, 1896.*

(Before WILLS and WRIGHT, JJ.)

KILLIN (app.) v. SWATTON (resp.) (a)

*Licensing—Peninsular officers and soldiers—Claim by statute to sell liquor without licence—53 Geo. 3, c. 67, s. 1.*

*The 53 Geo. 3, c. 67, provided that all such officers, mariners, soldiers, or marines, as had been employed in the service of His Majesty since the year 1802, and also the wives and children of such officers, &c., might set up and exercise such trades as they were apt and able for in any city, town, or place, without any let, suit, or molestation of any person whatsoever, any statute, law, ordinance, custom or provision, to the contrary in anywise notwithstanding:*

*Held, that this Act did not exempt persons coming within the classes described therein from the general provisions of the licensing or other Acts, but had reference merely to various restrictions such as those imposed by charters, or by local privileges or customs, and therefore did not enable a person to sell intoxicating liquor without the proper licence under the Licensing Acts.*

CASE stated by an alderman of the city of London.

The appellant was summoned before the alderman sitting at the Mansion House, on the 28th day of July, 1896, on an information laid by the respondent, acting chief inspector in the city police, for that he did, on the 16th day of July, 1896, in the city of London, unlawfully sell by retail in the basement of 45, Fish-street Hill, certain intoxicating liquor which he was not then licensed to sell by retail, contrary to sect. 3 of the Licensing Act, 1872 (35 & 36 Vict. c. 94).

It was proved or admitted that, on the date in question, the appellant had sold certain intoxicating liquor at the place mentioned in the summons, and that he was not then licensed to sell the same in accordance with the provisions of the Licensing Act, 1828, and the Acts amending the same.

That the appellant was the lawful son of one Thomas Killin, formerly a soldier in the 43rd regiment of foot, who served in the Peninsular war, and who was, in 1824, after fifteen and three-quarters years' service, admitted as an out pensioner at Chelsea Hospital, and the appellant was born in November 1833.

a) Reported by W. W. ORR, Esq., Barrister-at-Law.

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That the appellant had, for thirty-eight years preceding the present year, openly carried on the business of selling wine, spirits, or beer, in the county of London and elsewhere in England, without any licence under the Licensing Acts, and this business was carried on without concealment, but the appellant did not communicate the fact that he was carrying on such a business to the police or to the excise authorities.

It was contended on behalf of the appellant that (*inter alia*) the right and privilege of carrying on the trade of a licensed victualler, and of selling intoxicating liquor by retail without a licence in accordance with the provisions of the Licensing Act, 1828, and the Acts amending the same, had been acquired by him under the statute 56 Geo. 3, c. 67, and that this right and privilege were not affected by the repeal of that Act by the Statute Law Revision Act, 1873 (36 & 37 Vict. c. 91), the said right and privilege being in existence at the time of the passing of the last-mentioned Act, and therefore within the exemptions in that Act.

It was contended for the respondent that the statute 56 Geo. 3, c. 67, did not apply so as to exempt the appellant from the provisions of sect. 3 of the Licensing Act, 1872, and that, if it did so apply, it was repealed by implication by the Licensing Acts of 1828, 1869, and 1872, if not already so repealed by some earlier Act, and repealed expressly by the Statute Law Revision Act, 1873.

The learned magistrate, having referred to sects. 3 and 72 of the Licensing Act, 1872, and the Statute Law Revision Act, 1873, held that the appellant should have obtained a licence, and therefore convicted him, and ordered him to pay 40s. and 2s. costs.

The question for the opinion of the Court was whether the decision was right in point of law.

The 56 Geo. 3, c. 67, was passed in the year 1816, and was intituled

An Act to enable such officers, mariners and soldiers, as have been in the land or sea service, or in the marines, or in the militia, or any corps of fencible men, since the 42nd year of his present Majesty's reign, to exercise trades.

Sect. 1 recites :

Whereas there have been and are divers officers, mariners, soldiers and marines, who have served his Majesty in the late wars by sea and land, some of whom are men that used trades, others that were apprentices to trades, who have not served out their times, and others who, by their own industry, have made themselves apt and fit for trades: many of whom, the wars being now ended, would willingly employ themselves in those trades, which they were formerly accustomed to, or which they are apt or able to follow and make use of for getting their living by their own labour, but are or may be hindered from exercising those trades in certain cities and corporations, and other places within this kingdom, because of certain bye laws and customs of those places; for remedy whereof, be it enacted . . . that all such officers, mariners, soldiers and marines, as have been at any time employed in the service of his Majesty, since the 22nd day of June, 1802, and have not since deserted the said service, and also the wives and children of such officers, mariners, soldiers and marines, may set up and exercise such trades as they are apt and able for in any city, town, or place within this kingdom, without any let, suit, or molestation of any person or persons whatsoever, for or by reason of the using of such trade.

Then there was a paragraph that such persons should not be liable to be moved from their last legal place of settlement, which is not material :

And if any such officer, or officers, mariner, or mariners, . . . or the wife or any child of any such officer, mariner, soldier, or marine, shall be sued, impleaded or indicted in any court whatsoever within this kingdom for using or exercising any such trades as aforesaid, then the said officer, or officers, mariner or mariners, soldier or soldiers, marine or marines, or the wife or child of any such officer, mariner, soldier, or marine, making it appear to the same court where they are so sued, impleaded or indicted, that they have served his Majesty as aforesaid, or that he, she, or they, is or are the wife or wives, child or children, of such officer, or officers, mariner or mariners, soldier or soldiers, marine or marines, who shall have so served his Majesty, shall, upon the general issue pleaded, be found not guilty in any plaint, bill, information or indictment exhibited against them.

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Then there was a provision as to payment of double costs, and the section proceeded :

And all judges and jurors before whom any such suit, information or indictment, shall be brought, and all other persons whatsoever, are to take notice of this present Act, and shall conform themselves thereto, any statute, law, ordinance, custom, or provision, to the contrary in anywise notwithstanding.

This Act was expressly repealed by the Statute Law Revision Act, 1873 (36 & 37 Vict. c. 91), but the repeal was not to affect any existing status or capacity, or any right or title acquired or accrued, or any remedy or proceeding in respect thereof.

*H. Ivory* for the appellant.—If the conviction of the appellant was right in this case then the Excise authorities have been taking a wrong view of the matter for forty or fifty years, as this is the first time objection has been taken to this trading. This Act applies only to a trade, and the enacting part goes further than the preamble. The concluding words are that this Act is to be taken notice of “any statute, law, ordinance, custom, or provision to the contrary notwithstanding.” So that the operation of the Act is not limited to mere customs and bye-laws of cities or corporations, which the preamble refers to, because the enacting part entitles any person to carry on the trade without any molestation. [WRIGHT, J.—He may carry on the trade, but subject to the regulations made by the general law in the case of anybody else.] This provision was intended to give the right to carry on the trade without being subject to the regulations which affected other persons; and the preamble itself shows that. In the city of London, for instance, no person could carry on the trade of a vintner without being a member or freeman of the Vintners’ Company, which is exactly the same as requiring him to obtain a licence, and the statute says that, notwithstanding any such custom, he shall be entitled to carry on that trade in the city. He is to be entitled to do it “any statute to the contrary in anywise notwithstanding.” That must apply equally to any Licensing Act which says that any person who wishes to carry on the trade of a licensed victualler shall obtain a licence for doing it. The statute shows that this was contemplated as a business at that time, because the 4th section makes a special exception in favour of the universities of Cambridge and Oxford. A man may

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set up this trade of a vintner without a licence, and whether a licence is required by statute or by custom of a particular place can make no difference. [The question as to whether the alleged privilege was affected by the repeal of the Act was not argued.]

*R. D. Muir* for the respondent, was not called upon to argue.

WILLS, J.—I think this case is perfectly clear. I think this old Act of 1816 clearly meant to get rid of all the difficulties which were imposed by charters and by privileges which existed in particular towns and localities, and, in some instances, imposed by Acts of Parliament. The guiding words of the enactment are that these officers, mariners, and so on, may set up their trades in any city, town, or place within the kingdom without any let, suit or hindrance, and the proviso about the universities, to which our attention has been called, shows clearly that that is the meaning. It says that, notwithstanding this removal of all those legal difficulties, the universities of Oxford and Cambridge shall preserve their privileges to interfere with the business of people who propose to carry on the business of vintners without their authority and control. I think the case is really too clear for argument, and the notion that these people are exempt from all the general laws of the kingdom, which regulate the particular trades and which require licences in these trades, is to my mind the *ne plus ultra* of absurdity.

WRIGHT, J.—I agree.

*Appeal dismissed.*

Solicitors for the appellant, *Tiddeman and Enthoven*.

Solicitor for the respondent, *H. H. Crawford*.

## QUEEN'S BENCH DIVISION.

*Dec. 11 and 12, 1896.*

(Before WILLS and WRIGHT, JJ.)

COLLMAN (app.) v. MILLS (resp.). (a)

*Local government—Bye-laws—Creation of offence—Power to make bye-laws to “regulate conduct of businesses”—Prohibition of acts not prohibited by statute—Validity—Liability of master for acts done by servant—Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 19, sub-sect. 4.*

*Under a statutory power, which enabled the local authority to make bye-laws for “regulating the conduct of any businesses specified” in a section of the Act, amongst which was the business of “slaughterer of cattle,” the local authority made bye-laws providing that : “An occupier of a slaughter-house (a) shall not slaughter or permit to be slaughtered any animal . . . in any part of the premises except the slaughter-house ; (c) shall not slaughter or permit to be slaughtered any animal within public view, or within the view of any other animal :—*

*Held, that these bye-laws could properly be made under the power to make bye-laws for regulating the conduct of businesses, and were valid, notwithstanding that they prohibited acts not prohibited by the statute ; and, that, upon the proper construction of the bye-laws, “slaughtering” meant slaughtering either by the master himself or by his servant, so as to render the master liable to penalties for acts done by his servant in the course of the business without the master’s knowledge and against his instructions.*

CASE stated by Mr. Shiel, metropolitan police magistrate.

The respondent was summoned on the complaint of the appellant on behalf of the London County Council on two summonses, the first charging “that he, being the occupier of a licensed slaughter-house at No. 392, Old Kent-road, did unlawfully slaughter certain sheep in the pound attached to the said slaughter-house, contrary to the bye-laws for regulating the conduct of the business of a slaughterer of cattle, made in pursuance of the Slaughter-houses, &c. (Metropolis) Act, 1874 ;” and the second, charging “that he, being the occupier of a licensed slaughter-house at No. 392, Old Kent-road, did unlawfully slaughter

(a) Reported by W. W. ORR, Esq., Barrister-at-Law.



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certain sheep within the view of other sheep, contrary to the said bye-laws.

The bye-laws in question were No. 2 (a) and (c), and were in the following words :

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offence—  
Liability of  
master for  
acts done by  
servants.*

No. 2. An occupier of a slaughter-house (a) shall not slaughter or permit to be slaughtered any animal in any pound, pen, or lair, or in any part of the premises, except the slaughter-house; (c) shall not slaughter or permit to be slaughtered any animal within public view, or within the view of any other animal.

These bye-laws—to which certain penalties were annexed—were made under the powers given by sect. 4 of the Slaughter-houses, &c. (Metropolis) Act, 1874 (37 & 38 Vict. c. 67), which provided :

The local authority may from time to time make, alter, and repeal bye-laws for regulating the conduct of any businesses specified in this Act, which are for the time being lawfully carried on within their jurisdiction, and the structure of the premises on which such business is being carried on, and the mode in which application is to be made to the local authority for their sanction to establish anew any business under this Act.

This Act has been repealed by the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), but the provisions of sect. 4 of the Act of 1874 are re-enacted in substance in sect. 19, sub-sect. 4 of the Act of 1891.

Sect. 19 deals with “offensive trades,” amongst which is specified the business of a “slaughterer of cattle or horses;” and by sect. 141 the expression “cattle” includes sheep, goats, and swine.

Sub-sect. 4 of sect. 19 provides :

The county council may make bye-laws for regulating the conduct of any businesses specified in this section, which are for the time being lawfully carried on in London, and the structure of the premises on which any such business is being carried on, and the mode in which the said application is to be made.

It was proved or admitted that the respondent was the occupier of the slaughter-house in question; that on the 11th day of May, 1896, two sheep were slaughtered in the pound on the premises, and not in the slaughter-house, and in view of and close by eight or nine other live sheep; that such slaughtering was done by one Brigden, who was foreman and slaughterman in the employ of the respondent, and whose business it was to slaughter animals for the respondent, but who had no general authority to manage the business; that the respondent was absent from the premises at the time when such slaughtering was done, and that the respondent had forbidden his servants to do the acts complained of or either of them.

Brigden was called as a witness and acknowledged that he had disobeyed respondent’s orders, and had done so to save himself trouble.

The magistrate found that the acts complained of were done without the knowledge of the respondent, and he dismissed the summons on the ground that the respondent could not be said to have “permitted” that which was done in his absence, without his knowledge, and against his express prohibition, and was not

done by a person who had general authority to manage the business, and he referred the court to the case of *Somerset v. Wade*, 70 L. T. Rep. 452; (1894) 1 Q. B. 574.

The question now was, whether the learned magistrate was right in law in his decision.

*H. Ivory* for the appellant.—The magistrate gave as his reason for dismissing the summonses that the respondent could not be said to have “permitted” that which was done in his absence and against his instructions, but the respondent was not charged with “permitting” the slaughtering of the animals, but with “slaughtering” them contrary to the provisions of the bye-laws. The respondent would be equally responsible whether the act is done by himself or by his servant, on the principle of *Qui facit per alium facit per se*; and he is responsible if the servant whom he has left to do the work breaks the law. These bye-laws are made under the Public Health (London) Act, 1891, but they are the same as under the Act of 1874, as the authority now given to the London County Council by sect. 19 (4) of the Act of 1891, is an authority to “make bye-laws for regulating the conduct of any businesses” specified in the section. The meaning of the bye-laws is obvious. The words “he shall not slaughter” mean he shall not slaughter either by his own hand or by the hands of his servants; and the bye-laws go on to say “he shall not permit to be slaughtered,” the meaning of which is equally obvious. As every person has to obtain a licence for this business, he is in the same position as a licensed victualler, who in certain cases is liable for the act of his servant done in his absence and against his instructions: (*The Commissioners of Police v. Cartman*, 74 L. T. Rep. 726; (1896) 1 Q. B. 655.) That case shows that a servant may be acting within the scope of his employment, even though he is acting contrary to his master’s orders.

*Morton Smith* for the respondent.—The magistrate was right in his decision whether the charge be regarded as one for “slaughtering” or for “permitting” the slaughtering. In either case to render the master liable to these penalties knowledge on his part was necessary. “Permit” must impute knowledge, and when an offence is committed by permitting a thing to be done, then knowledge is necessary to render the person liable. The offence charged in these summonses is a criminal offence, and, by common law, a person cannot be made criminally liable for acts done by his servant without his knowledge. If an act is prohibited by the statute itself, then in certain cases a master may be liable for acts done by his servant without his knowledge; but if an act is not prohibited by statute and is not an offence at common law, then a person cannot at common law be made criminally liable for acts done, when done by another without his knowledge. The prohibition against doing the acts now complained of, is not in the statute; it is a prohibition in the bye-law, and in the bye-law alone, and, therefore, if the contention of the county council be correct, the bye-law would

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be creating a criminal offence, and turning that into a criminal offence which was not a criminal offence, either at common law or under any statute. I submit that a bye-law cannot do any such thing. No doubt in certain cases a master has been held to be criminally answerable for the acts of his servants done without his knowledge, as in *Bond v. Evans* (59 L. T. Rep. 411; 21 Q. B. Div. 249); *The Commissioners of Police v. Cartman* (*ubi sup.*); and even where there is no guilty knowledge of either master or servant, as in *Cundy v. Le Cocq* (51 L. T. Rep. 265; 13 Q. B. Div. 207); but in these cases the prohibition was contained in the statute itself. Where there is no statutory prohibition, and even in many cases where there is a statutory prohibition, knowledge, either actual or implied, is absolutely essential for a conviction, as instances of which may be cited: *Somerset v. Hart*, 12 Q. B. Div. 360; *Newman v. Jones*, 55 L. T. Rep. 327; 17 Q. B. Div. 132; *Sherras v. De Rutzen*, 72 L. T. Rep. 839; (1895) 1 Q. B. 918; *Small v. Warr*, 47 J. P. 20. So, it has been held that to convict a person under an order made by the Privy Council under the Contagious Diseases (Animals) Act, 1869, of an offence against the order, it was necessary to prove knowledge: (*Nicholls v. Hall*, 28 L. T. Rep. 473; L. Rep. 8 C. P. 322; *Carroll v. Eivers*, 7 Ir. Rep. C. L. 226.) In *Reg. v. Stevens* (14 L. T. Rep. 593; L. Rep. 1 Q. B. 702), where an owner of works was held to be liable to be indicted for a public nuisance caused by his servants without his knowledge, the decision was based on special grounds, as that the business was carried on for the owner's benefit; and Blackburn, J. says that they did not mean to infringe the general rule, "that a principal is not criminally answerable for the acts of his agent." Here the act complained of—slaughtering in an improper place—was not done for the master's benefit, but, on the contrary, would cause extra trouble and expense. Parliament can make a master criminally liable for the acts of his servant done without his knowledge, but a bye-law cannot do so, and any bye-law which purports to do so is repugnant to the common law, and is *ultra vires*, and an infringement of the general principle, that you cannot make a master criminally responsible for the acts of his servant done without his knowledge, unless there is an express statutory prohibition against doing the act. As to the bye-law itself, it is capable of two constructions. It may mean that the master "shall not slaughter," that is, slaughter by his own hands—in which case the respondent does not come within it as he did not slaughter by his own hands—or it may mean, he shall not slaughter either by himself or by his servants, in which case the bye-law is bad, so that in either view the respondent ought not to be convicted. If two constructions can be placed upon the bye-law, one of which will make it valid, and the other will make it invalid, then the one which will make it valid ought to be adopted.

*Avory* in reply.—It can make no difference whether the thing prohibited is prohibited in a bye-law or in a statute, and the construction ought to be the same whether the prohibition is in a bye-law or in a statute. The construction of the bye-law which I am suggesting is perfectly consonant with the common law, which holds that every master or employer is responsible for the acts of his servant if done within the scope of his employment. [WILLS, J.—Yes, civilly, but not criminally, and this is a crime.] This is only a crime in the sense pointed out by Lush, J. in *Davies v. Harvey* (30 L. T. Rep. 629; L. Rep. 9 Q. B. 433). It is a class of acts which are not criminal in any real sense, but which in the public interest are prohibited under a penalty. The general principle of law that a master cannot be made criminally responsible for the act of his servant without his knowledge, is subject to this qualification, that where—as in this case—the act is an act which is prohibited in the public interest, and is not a crime in the ordinary sense, then the master is liable for the act of his servant done within the scope of the servant's employment: (*Commissioners of Police v. Cartman* (*ubi sup.*)), and this bye-law should be looked at and construed as if it were the statute itself. The bye-law was good if it was not inconsistent with the general law to be found either in similar statutes or in common law, and if it went no further than the statutes which were passed with similar objects, the operation of the bye-law was not to be limited in any other sense than a statute passed for a similar purpose would be limited, and as these statutes never did say in terms that the master shall be liable, so the bye-law need not say so in terms in order to make the master liable.

WILLS, J.—This case has presented some difficulty, and has raised at least one very important point of principle; but I think it may be disposed of in consonance with the established principles of common law, and of the law applicable to bye-laws, and yet we may hold, as I am prepared to do, that the offence has been committed in this particular case. The objection that has been taken would be, I think, well founded, and a good objection in itself if it applied properly to the present case. It is, as I understand it, this: that by the common law of England a man is not, generally speaking, responsible criminally for the things which are done by his servants without his knowledge; that this is a crime, and therefore by the common law of England a man who knows nothing of what has been done cannot be responsible for penalties in this case; that a bye-law must not be repugnant to the common law of England, unless, of course, it is within the express powers given by the Act of Parliament, under which the bye-laws are made; and therefore, when you are dealing with a bye-law you cannot say, as you can always say in the case of an Act of Parliament, Parliament has constituted that an offence and a criminal offence, which would not, by the common law of England, be a criminal offence; and

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as Parliament is supreme it does not matter that it is a violation of the ordinary principles of the common law, it is the will of Parliament, and the Courts must give effect to it, but you must say that where the bye-law is made it must be generally consonant with the English law, and that if it violates that principle it is a bad bye-law. Therefore, it was argued, if there are two constructions of a bye-law, one of which will make it a bad bye-law, and the other will not make it a bad bye-law, we must adopt the one, although it would not otherwise be a natural one to adopt, which makes it consonant with the law of England; and on this ground, it was argued, that this expression, "shall not slaughter," ought to be construed in a different way to that in which the words "shall not sell" are construed in the Licensing Acts with reference to the penalties affixed to the offence. That is the argument for the respondent, and it seems to me that it would be sound except for this, that these bye-laws are made under the statutory power to regulate the conduct of the business. These are wide words, and we must remember, when we are dealing with these matters of bye-laws and penalties, and creating offences, that there is a distinction which has frequently been drawn between things which are criminal in themselves, things which are morally wrong and wicked, and things which are made criminal and prohibited by penalties, because the prohibition of them is for the public good. In the latter case a greater latitude may reasonably be allowed in dealing with a bye-law made for such a purpose, than if the bye-law were one which was not dealing with that particular class or category of cases. That is a distinction pointed out long ago by Lush, J. in the case of *Davies v. Harvey* (*ubi sup.*). I think, apart from that, this power to make bye-laws for the conduct of business is wide enough to give a statutory authority to make such a bye-law as this, and to effect such legislation as this. If this bye-law had said in terms that the business shall be so carried on and so conducted (which is the phraseology of the Act), that "no animal shall be slaughtered in a pen, and no animal shall be slaughtered in view of other animals," then I should agree with Mr. Ivory in thinking that that bye-law would be a perfectly good bye-law; and I do not think that this bye-law does anything more, really, than say that in other words. I therefore think that it is within the power of the county council to make bye-laws such as these for regulating the conduct of the business. If it is within that power, then there is no reason why the law should not receive its natural construction so as to include the acts of the servant. I say its natural construction for this reason, that it has been pointed out in some of the cases, and is, in fact, quite obvious that in businesses of this kind, which are very often carried on on a very extensive scale, and which must be carried on by the employment of numerous servants, the legislation becomes inoperative and practically useless, if the application of it is confined to



the servants, and if the master is not rendered liable as well. It seems to me, looking at what a slaughter-house is, and bearing in mind the fact that one man probably employs dozens of servants to do these things, that it would be a very poor protection that would be afforded if "slaughtering" did not mean slaughtering either by himself or by his servants. As I am of opinion that to make such a bye-law, notwithstanding its being generally repugnant to the law of England, is within this power of making bye-laws to regulate the conduct of the business, and to fix penalties for the breach of bye-laws so made under that power, I think in this case the decision of the magistrate ought to be reversed, and the case ought to go back to him for conviction.

WRIGHT, J.—I am of the same opinion. It seems to me that the county council have, under this Act, power given to them to say that if a person chooses to take a licence for a slaughter-house, he shall have such licence only upon the terms that the business shall be conducted in a particular way, and that he, being a licensed victualler, shall be liable to a penalty if it is not carried on in that way.

*Appeal allowed with costs. Case remitted to magistrate.*

Solicitor for the appellant, *W. A. Blasland.*

Solicitor for the respondent, *W. T. Ricketts.*

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## QUEEN'S BENCH DIVISION.

*Saturday, Jan. 23, 1897.*

(Before WRIGHT and BRUCE, JJ.)

HOLLOWAY (app.) v. COSTER (resp.) (a)

*Vaccination—Notice—Service of—Sufficiency of service—Vaccination Act, 1867 (30 & 31 Vict. c. 84), s. 31.*

*Personal service of the notice required by sect. 31 of the Vaccination Act, 1867, to be given to a parent to have his child vaccinated is not necessary, nor is it necessary to show affirmatively that such notice reached the person for whom it was intended. The question of the sufficiency of such service is a question of fact to be determined by the justices upon the circumstances of each particular case.*

CASE stated by justices of the peace for the borough of Andover, as to the sufficiency of the service of a vaccina-

(a) Reported by W. W. ORR, Esq., Barrister-at-Law.



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tion notice under the Vaccination Act, 1867 (30 & 31 Vict. c. 84).

The appellant, Holloway, was summoned before the justices to answer an information exhibited by the respondent, John Coster, vaccination officer of the Andover Union, under sect. 31 of the Vaccination Act, 1867, for having neglected to have his daughter vaccinated after having due notice to do so.

The case was heard before the justices on the 5th day of October, 1896, when they ordered the appellant to have the child vaccinated, and to pay the costs forthwith, and in default of payment and distress to be imprisoned for three days.

At the hearing of the case the appellant did not appear, but he was represented by counsel, who took the objection that there was no proof of the service of the statutory notice under sect. 31, and that the service of such notice, if delivered otherwise than personally, must be shown to have reached the person to be notified: (*Knight v. Halliwell*, 30 L. T. Rep. 359; L. Rep. 9 Q. B. 412).

The evidence as to the service of the notice was as follows: The witnesses were (1) the respondent (Mr. Coster), who swore that he made out notice "C." in respect of Daisy Holloway, that he addressed it to James Holloway (the appellant and father of the child), and handed it, on the 26th June, 1896, to one Plumley, for delivery to the appellant; (2) Plumley—who had been accustomed to serve County Court summonses and other notices—who swore that he received a number of notices from Mr. Coster, and amongst them one for James Holloway, and that he took this notice to Holloway's house, and gave it to a woman there, telling her that it was a vaccination notice, but he could not swear that the woman was the wife of James Holloway, or as to the date on which he delivered the notice, except that it was the day after the respondent had handed all the notices to him; and in cross-examination he said that he could not swear that the notice which he left with the woman at Holloway's house was in respect of Daisy Holloway, but that the respondent, when he gave him the notice, said nothing about the name of the child, and that the notice was filled up when he received it, and that he did not open it.

The justices were advised by their clerk that, if they were satisfied that the notice was served upon the appellant in a manner as effectual as if the respondent had properly addressed and posted it, then the service would be good, and therefore the majority of the justices overruled the objection.

The question now was, whether the majority of the justices were right in holding the service of the notice good.

Sect. 31 of the Vaccination Act, 1867 (30 & 31 Vict. c. 84) provides:

If any registrar, or any officer appointed by the guardians to enforce the provisions of this Act, shall give information in writing to a justice of the peace that he has reason to believe that any child under the age of fourteen years, being within the

union or parish for which the informant acts, has not been successfully vaccinated, and that he has given notice to the parent or person having the custody of such child to procure its being vaccinated, and that this notice has been disregarded, the justice may summon such parent or person to appear with the child before him at a certain time and place, and upon the appearance, if the justice shall find, after such examination as he shall deem necessary, that the child has not been vaccinated, nor has already had the smallpox, he may, if he sees fit, make an order under his hand and seal directing such child to be vaccinated within a certain time, &c.

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*Schultess-Young* for the appellant.

The respondent did not appear.

WRIGHT, J.—The only question which the justices had to decide was, whether the notice was sufficiently served. No particular mode of service is required by the statute, and, that being so, it is a question for the justices to determine, upon the facts of each particular case, whether the notice reached the person for whom it was intended.

BRUCE, J.—All the justices had to determine was whether the notice reached the defendant. The justices found it had reached him, and it was a question of fact for them.

*Appeal dismissed.*

Solicitor for the appellant, *Cheverton*.

## QUEEN'S BENCH DIVISION.

*Saturday, Jan. 23, 1897.*

(Before WRIGHT and BRUCE, JJ.)

SOUTHCOTBE (app.) v. THE GUARDIANS OF THE YEovil  
UNION (resps.). (a)

*Vaccination—Neglect to procure vaccination—Justice signing summons—Necessity of subsequent order being signed by same justice—Vaccination Act, 1867 (30 & 31 Vict. c. 84), s. 31.*

*It is not necessary that the justice who grants a summons under sect. 31 of the Vaccination Act, 1867, should afterwards hear the case, or sign the order directing the vaccination to take place.*

CASE stated by justices of the peace for the borough of Yeovil.

At a petty sessions held for the borough of Yeovil on the 3rd day of November, 1896, the appellant was summoned on the

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information of the duly appointed vaccination officer of the guardians of the Yeovil Union (the respondents) for that he (the appellant) being the parent of a certain child under the age of fourteen years unlawfully did omit to carry into effect a certain order of the court of summary jurisdiction sitting on the 1st day of September, 1896, made pursuant to sect. 31 of the Vaccination Act, 1867, whereby it was ordered that the appellant should cause the said child to be vaccinated within twenty-one days from the date thereof, the said period having expired and the child not having been so vaccinated nor shown to be unfit to be vaccinated nor to be insusceptible of vaccination, contrary to sect. 31 of the Act.

The appellant was convicted and fined 5s.

It was proved or admitted (a) that on the 30th day of July, 1896, the vaccination officer laid an information against the appellant before Mr. John Curtis, one of the justices of the peace for the borough, by whom a summons was granted founded upon such information; that such summons was returnable on the 4th day of August, but at the request of the appellant the hearing was adjourned until the 1st day of Sept. on which day the information was heard at a petty sessions, at which there were present the said John Curtis, and three other justices of the borough, who duly adjudicated upon the matter, the appellant being represented at the hearing by his solicitor; (b) that a formal order was drawn up and signed by two of the justices and served on the appellant on the 9th day of September, and that the said John Curtis was not one of the justices who had signed this order; (c) that the order had not been complied with.

It was contended on behalf of the appellant that the words of sect. 31 of the Vaccination Act, 1867, make it necessary that the justice before whom the original information is sworn must not only sign the summons served on the appellant, but must also hear and sign the order, and that the appellant having been served with an order not signed by such justice had just ground for refusing to comply with it as it, was a bad order.

The justices were of opinion that the justice who acted before the hearing need not be one of the justices before whom the case was heard and determined, and by whom the order was signed; and, further, that the order was made by the said John Curtis, although not signed by him, and they gave their determination against the appellant.

The questions for the opinion of the Court were: (1) Whether the justice who signed the summons must hear it and sign the order; (2) whether the appellant was justified in refusing to comply with the order served on him on the ground that it was not signed by the said John Curtis.

*Schultess-Young* for the appellant.

The respondent did not appear.

WRIGHT, J.—I think that the objection in this case was taken at the wrong stage. If there was anything in the objection pro-

ceedings might have been taken to quash the order. But apart from that, I think it reasonable to hold that, as the Summary Jurisdiction Act, 1848, is incorporated with the Vaccination Act by sect. 33 of the Act, the provisions of the Summary Jurisdiction Acts should be applied to this case. That being so, it was not necessary for the justice who signed the summons to hear and determine the case and sign the order. I think, however, that the case is not free from doubt.

BRUCE, J.—I am of the same opinion. It seems to me that it would be most unreasonable to hold that, if the justice who signed the summons should be ill or dead, it would be necessary to take out a fresh summons.

*Appeal dismissed.*

Solicitors for the appellant, *Sharpe, Parker, and Co.*, for *Rendall, Yeovil.*

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## QUEEN'S BENCH DIVISION.

*Thursday, Dec. 10, 1896.*

(Before WILLS and WRIGHT, JJ.)

THOMSON (app.) v. BURNS (resp.). (a)

*Sea fisheries*—"Taking"—"Removing from the fishery"—*Sea Fisheries (Shell Fish) Regulation Act, 1894 (57 & 58 Vict. c. 26), s. 1.*

*The taking of shell fish from the bed in which they were found, with the intention of taking them away altogether, amounts to a removal of such shell fish from the fishery within bye-laws made under sect. 1 of the Sea Fisheries (Shell Fish) Regulation Act, 1894 (57 & 58 Vict. c. 26), even though, as a matter of fact, the shell fish were in the result not actually taken away.*

**A**PPEAL by case stated, from the decision of justices.

At a petty sessions, holden at Ulverston on the 4th day of June, 1896, an information was preferred by William Thomson, a duly appointed bailiff for the Lancaster Sea Fisheries District, against Edward Burns, under bye-law 21 of the Lancashire Sea Fisheries District, charging for that he, Edward Burns, on the

(a) Reported by J. ANDREW STRAHAN, Esq., Barrister-at-Law.

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*57 & 58 Vict. c. 26, s. 1.*

24th day of May, 1896, at a certain fishery at Bay Cliffe Sands in Morecambe Bay, within the limits of the Lancashire Sea Fisheries District did unlawfully remove from the said fishery certain cockles which would pass through a gauge having an oblong opening of three-quarters of an inch in breadth and not less than two inches in length, contrary to the bye-laws of the Lancashire Sea Fisheries in that behalf duly made and confirmed, which said bye-laws were at the time of the commission of the said offence and are still in force for the district aforesaid, and contrary to the form of the statute in such case made and provided.

The bye-laws of the Lancashire Sea Fisheries district in question were made under the powers conferred on the local fisheries committee by the Sea Fisheries (Shell Fish) Regulation Act, 1894 (57 & 58 Vict. c. 26).

Sea Fisheries (Shell Fish) Regulation Act, 1894 :

Sect. 1.—(1.) The powers of a local fisheries committee to make bye-laws in pursuance of sect. 2 of the Sea Fisheries Regulation Act, 1888 (51 & 52 Vict. c. 54) shall extend to making bye-laws to be observed within their district for the regulation, protection, and development of fisheries for all or any specified kinds of shell fish, and any such bye-laws may provide, among other things for (a) the fixing of the sizes and condition at which shell fish may be removed from a fishery, and the mode of determining such sizes; (b) the obligation to re-deposit in specified localities any shell fish the removal or possession of which is prohibited by or in pursuance of any Act of Parliament.

Bye-law 21 of the Lancashire Sea Fisheries District was as follows :

No person shall remove from a fishery any cockle which will pass through a gauge having an oblong opening of three-quarters of an inch in breadth and not less than two inches in length.

Bye-law 25, which was referred to both in the argument and in the judgment, was as follows :

Any person who takes any shell fish the removal of which from a fishery is prohibited by any bye-law in force in this district, or the possession of which is prohibited by any Act of Parliament, shall forthwith re-deposit the same without injury as nearly as possible in the place from which they are taken, and in re-depositing cockles in accordance with this bye-law, shall spread them thinly and evenly over the beds.

At the hearing of the information it was found as a fact that cockles were to be found in all parts of Morecambe Bay, and that on the 20th day of May, 1896, Edward Burns was fishing for cockles in Morecambe Bay, and had several bags on the sands round his cart partly filled with cockles which had been washed, and that a considerable proportion of such cockles were of such a size that they would pass through a gauge having an oblong opening of three-quarters of an inch in breadth and not less than two inches in length. Burns, when spoken to by Thomson, said that if Thomson had not come on the sands he would have taken the cockles away. At Thomson's request he sorted the cockles and left on the sands those which were too small, and only took away such of the cockles as were of proper size. On these facts the magistrates held that, although it was clearly the intention of

Burns if he had not been interfered with by Thomson to have removed from the fishery the undersized cockles which he had in his bag, yet he had not actually done so, and they dismissed the summons. Thomson appealed.

*Pickford*, Q.C. (*L. Sanderson* with him) for the appellant.—It is not denied that there is a distinction between “taking” in bye-law 25, and “removal” in bye-law 21. No doubt, if the summons had issued under bye-law 25, the respondent would have had no answer to it. But it is submitted that he has no answer to the summons for removal under bye-law 21; removal cannot be held to mean removal right off the sands. Probably the jurisdiction of the district fishery committee ceased at high-water mark, and if there can be no removal from the fishery until the fish is taken off the sands, then the powers of search given by sect. 6 of the Sea Fisheries Regulation Act, 1888, are useless. Those powers are to be exercised only within the sea fisheries district. It is submitted that “taking” in bye-law 25 means merely actual removal from the cockle bed, while “removal” means a taking from the cockle bed with the intention of not restoring them to it. The words of the bye-law and also of the Act are removal from the fishery, not removal from the fishery district, and are satisfied by a removal from the place where they were found.

*Manisty* for the respondent.—There had been a taking, but no removal within bye-law 21. The respondent never took the cockles off the sands, and the magistrates had found that the cockle fishery extended over the whole sands in the district. Whatever intention the respondent might have had, there was then no removal from the fishery. There might have been a taking within bye-law 25, but there was no removal from the fishery within bye-law 21.

*Pickford*, Q.C. in reply.

*WILLS*, J.—The question to be decided is not without difficulty, but I have come to the conclusion that the appeal should succeed. The view urged by the counsel for the respondents is no doubt a very tempting one, mainly because it is so simple. The word “remove” in bye-law 21, and the word “take” in bye-law 25, are certainly distinctive words, and so it is argued that bye-law 21 must refer to a removal not merely from the actual fishery, but from the fishery district; that is off the sands where the fishery is. But the bye-law does not say “remove from the fishery district,” but “remove from the fishery,” which is a different thing, and I cannot help thinking that there may be a “removal from the fishery” within bye-law 21, when the undersized fish are actually taken from the fishery without any intent on the taker’s part to replace them under bye-law 25, and with the intent of taking them away altogether. Any other interpretation would open the door very wide.

*WRIGHT*, J.—I agree. I may just point out, in support of our decision, that the words of the Sea Fisheries (Shell Fish) Regu-

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 from the  
 fishery”—  
*Sea Fisheries*  
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 Regulation  
 Act, 1894—  
 57 & 58 Vict.  
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- lation Act, 1894, are not “may not be removed from the fishery district,” but “may not be removed from the fishery.” Where the district is meant the Act uses the word district. Here the bye-law follows the words of the Act, and the only point is whether there has been a sufficient severance for the purpose of taking away.
- Appeal allowed. Case remitted.*
- Solicitors for the appellant, *Arkcoll and Co.*, for *Sanderson*, Lancaster.
- Solicitors for the respondent, *Ounliffes and Davenport*, for *E. Walker*, Ulverston.

## QUEEN'S BENCH DIVISION.

*Thursday, Dec. 10, 1896.*

(Before WILLS and WRIGHT, JJ.)

OSBORN (app.) v. WOOD BROTHERS (resps.). (a)

*Justices—First offence—Mitigation of penalty—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), ss. 4 and 51—Cotton Cloth Factories Act, 1889 (52 & 53 Vict. c. 62), s. 13.*

*In the case of first offences under the Cotton Cloth Factories Act, 1879 (42 & 43 Vict. c. 49) the justices have no jurisdiction to reduce the fine below the amount fixed by sect. 13, notwithstanding the provisions of sects. 4 and 51 of the Summary Jurisdiction Act, 1889 (52 & 53 Vict. c. 62).*

**A**PPEAL, by case stated, from the decision of justices.

The appellant, an inspector of factories for Lancashire, had laid an information against the respondents, the occupiers of a cotton factory, charging them with an offence under sect. 13 of the Cotton Cloth Factories Act, 1889 (52 & 53 Vict. c. 62). At the hearing the justices convicted the respondents, but, instead of fining them 5*l.*, the minimum penalty set out in sect. 13, they imposed a penalty of 1*l.* The question raised by the case was whether or not the justices had jurisdiction to reduce the amount of the penalty.

(a) Reported by J. ANDREW STRAHAN, Esq., Barrister-at-Law.

**Cotton Cloth Factories Act, 1889 (52 & 53 Vict. c. 62) :**

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Sect. 13. If in the case of any cotton cloth factory there is a contravention of or a non-compliance with any of the provisions of this Act, the inspector shall give notice in writing to the occupier of the same of the act or acts or omissions constituting the contravention or non-compliance, and if such acts or omissions, or any of them, are continued or not remedied, or are repeated within twelve months after such notice has been given, the occupier of such factory shall be liable, on summary conviction, for the first offence to a penalty of not less than 5*l.* nor more than 10*l.*, and for every subsequent offence to a penalty of not less than 10*l.* nor more than 20*l.*

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Jurisdiction—  
Mitigation of  
penalty—  
First offence—  
Summary  
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Cotton Cloth  
Factories Act,  
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Vict. c. 49,  
ss. 4, 51 ;  
52 & 53 Vict.  
c. 62, s. 13.*

**Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49) :**

Sect. 4. Subject as in this Act mentioned, and notwithstanding any enactment to the contrary, where a court of summary jurisdiction has authority under this Act or under any other Act, whether past or future, to impose . . . a fine for an offence punishable on summary conviction, the court . . . in the case of a fine, if it be imposed as in respect of a first offence, may reduce the prescribed amount thereof.

Sect. 51. The following regulations shall be made for the purpose of facilitating the application of the Summary Jurisdiction Acts to any future Act ; that is to say,

(1.) Where in any future act, any offence is directed or authorised to be prosecuted summarily or on summary conviction, or any fine is directed or authorised to be recovered summarily or on summary conviction, or any other words are used implying that such offence is to be prosecuted or fine is to be recovered in manner provided by the Summary Jurisdiction Acts, the Summary Jurisdiction Acts shall apply accordingly.

*H. Sutton* for the appellant.—Sect. 4 of the Summary Jurisdiction Act, 1879, clearly gives the justices jurisdiction to reduce fines in the case of first offences, whether the offence arises under an Act in force when the Summary Jurisdiction Act, 1879, was passed, or under an Act coming into force since then. But that Act can, as regards statutes passed since its enactment, only lay down a rule which will apply when the Legislature has not expressed a different intention in the later statute ; and the contention is that here the Legislature has expressed a different intention. The words of the Act are that the penalty shall not be less than 5*l.* That, it is submitted, is sufficient to create an exception to the rule established by the Summary Jurisdiction Act, 1879, that the justices may reduce fines in the case of first offences. This, as a matter of fact, is not in the nature of a first offence of the ordinary character, and so an exception may be very reasonably made to the ordinary rule.

*Danckwerts* for the respondents.—It is admitted that an Act of Parliament cannot bind the hands of subsequent Parliaments, and that the Summary Jurisdiction Act, 1879, cannot prevent Parliament imposing by a later statute a fine which cannot be reduced, even in the case of first offences. But in order that the later statute may override the Summary Jurisdiction Act, 1879, the intention of Parliament to override it must be made very clear. It is submitted that the language used in sect. 13 of the Cotton Cloth Factories Act is not at all decisive. It merely says that the fine shall not be less than 5*l.* It was just to meet cases like this that sect. 4 of the Summary Jurisdiction Act was passed. Where no minimum fine is imposed by a statute, there is jurisdiction in the justices to impose as small a fine as they think fit without the aid of sect. 4. Then sect. 13, by the use

**OSBORNE** of the words "summary conviction," incorporates the Summary  
**v.** Jurisdiction Act, 1879, with the Cotton Cloth Factories Act.  
**WOOD** Sect. 4, then, must be read as part of the latter Act, and it must  
**BROTHERS.** be allowed to operate unless there is something in the Cotton  
 1896. Cloth Factories Act to repeal it: (*Kutner v. Phillips*, 64 L. T.  
*Rep.* 628; (1891) 2 Q. B. 267; *Dobbs v. Grand Junction Water-*  
*works Company*, 49 L. T. *Rep.* 541; 9 App. Cas. 49; *Reg. v.*  
*Oastler*, 29 L. T. *Rep.* 830; L. *Rep.* 9 Q. B. 132.)  
*Justices of the* *H. Sutton* in reply.—There is no question here of the repeal of  
*peace—* sect. 4 of the Summary Jurisdiction Act, 1879. All we contend  
*Jurisdiction—* is, that sect. 13 of the Cotton Cloth Factories Act, 1889, has  
*Mitigation of* created an exception to sect. 4 in the case of offences under the  
*penalty—* latter Act.  
*First offence—*  
*Summary*  
*Jurisdiction*  
*Act, 1879—*  
*Cotton Cloth*  
*Factories Act,*  
 1889—42 & 43  
*Vict. c. 49,*  
*ss. 4, 51;*  
 52 & 53 *Vict.*  
*c. 62, s. 13.*

**WILLS, J.**—I am of opinion that this appeal must succeed. I  
 think that the words of the subsequent statute are too plain. It  
 is true that sect. 15 of the Cotton Cloth Factories Act uses the  
 expression that the fine is to be recovered "on summary con-  
 viction," and by sect. 51 of the Summary Jurisdiction Act, 1879,  
 words of that character mean that the Summary Jurisdiction Act  
 shall apply, and therefore the Summary Jurisdiction Act does  
 apply, unless we can see plainly that where it is inconsistent  
 with a later Act, the will of Parliament is clearly expressed that  
 in this particular instance the specific legislation shall supersede  
 the general legislation. I think, when you come to look at the  
 character of the offence which is created here, it is perfectly  
 certain that what Parliament meant to say was that if this  
 particular offence has been committed, it shall be treated as a  
 serious matter, and it is a matter upon which the magistrate shall  
 have no power to go below a 5*l.* penalty. It is not an ordinary  
 offence that is created here. It is only when notice in writing  
 has been given by the inspector, and when, notwithstanding that  
 notice in writing, the Acts or omissions complained of have been  
 continued, or have not been remedied within twelve months after  
 notice given that the offence is constituted. That shows some-  
 thing like a very intentional violation of the Act, and a determi-  
 nation not to carry out its provisions. I feel no doubt myself  
 that what Parliament meant was that, notwithstanding the incor-  
 poration of the Summary Jurisdiction Act, if this particular type  
 of offence is committed, the magistrates shall treat it as a serious  
 thing, and have no power to apply the provisions of that Act,  
 which would enable them otherwise to reduce the penalty. It is  
 no case of the repeal of the Act. The only point raised, and  
 the only point we decide, is that in this specific instance Parlia-  
 ment meant the expression of its will contained in this section  
 to override the provisions in sect. 4 of the Summary Jurisdiction  
 Act.

**WRIGHT, J.**—I am of the same opinion. I think we should be  
 assuming legislative powers if we held otherwise. It might be  
 enough to say, and probably it is better to put it on the ground  
 that even if you read into this Act, as I agree you must do,

sect. 4 of the Summary Jurisdiction Act, the legislation of 1889 deliberately engrafted an exception on to the Act of 1879. I am not sure there is not another answer, and that is, that sect. 4 of the Act of 1879 was dealing with what I am going to notice next. There were numerous enactments, as we all know, which took this form: that if a man is convicted summarily of a certain offence, he shall be liable to a penalty of forty shillings. At one time it was thought that justices could not alter the amount of the penalty in such cases. It may be that the intention of sect. 4 was that as to past Acts there shall be a power of mitigation in all cases, and that as to future Acts, where Parliament does not prohibit mitigation, there shall be a power of mitigation.

*Appeal allowed; case remitted.*

Solicitor for the appellant, *Solicitor for the Treasury.*

Solicitors for the respondents, *Rowcliffes, Rawle, and Co., for John Hall, Bury, Lancashire.*

OSBORN  
v.  
WOOD  
BROTHERS.

1896.

*Justices of the  
peace—  
Jurisdiction—  
Mitigation of  
penalty—  
First offence—  
Summary  
Jurisdiction  
Act, 1879—  
Cotton Cloth  
Factories Act,  
1889—42 & 43  
Vict. c. 49,  
ss. 4, 51;  
52 & 53 Vict.  
c. 62, s. 13.*

## COURT OF APPEAL.

*Dec. 18, 19, 1896, and Jan. 29, 1897.*

(Before Lord ESHER, M.R., LOPES and RIGBY, L.JJ.)

JONES v. GERMAN. (a)

APPEAL FROM THE QUEEN'S BENCH DIVISION.

*Justices—Jurisdiction—Search-warrant—Sufficiency of information—Allegation of reasonable suspicion of larceny—Goods not specified.*

*A justice has jurisdiction to grant a search-warrant upon a sworn information which may reasonably be understood to allege reasonable cause to suspect that goods have been stolen. It is not necessary that the information or the warrant should specify the goods.*

THIS was an appeal by the plaintiff against the judgment of Lord Russell, C.J., after the trial with a jury in Middlesex (18 Cox C. C. 411; 75 L. T. Rep. 161).

The action was brought to recover damages for illegal arrest, false imprisonment, and trespass to goods.

(a) Reported by J. H. WILLIAMS, Esq., Barrister-at-Law.

JONES  
v.  
GERMAN.

1897.

Justice of the  
peace—  
Jurisdiction—  
Search-  
warrant—  
Information  
—Sufficiency  
of allegations.

The plaintiff was employed as butler and bailiff by one Mr. Wood, at Brasted, in Kent. The defendant was a justice of the peace for the county of Kent.

In 1895 Mr. Wood gave the plaintiff notice to leave his service. The plaintiff had several boxes packed ready for removal, and Mr. Wood asked him to allow them to be searched. The plaintiff refused permission.

Mr. Wood then went before the defendant as a justice of the peace, and applied for a search-warrant. The sworn information upon which the application was made was as follows :

Be it remembered . . . that Thomas Wood . . . on oath maketh complaint that he hath just and reasonable cause to suspect, and doth suspect, that William Jones, of Brasted, has in his possession certain property belonging to the said Thomas Wood, and upon his oath doth depose and say that the said William Jones has been in his employ for five years, and is now under notice to quit, and that he has requested the said William Jones to allow him to search several boxes which he the said Jones has had packed ready to be taken away, but which he refuses to be looked through.

The defendant issued a search-warrant to a constable authorising him

With proper assistance to enter the said premises occupied by the said William Jones, in the day time, and there diligently search for the said goods, and if the same, or any part thereof, shall be found upon such search, that you bring the goods so found, and also the body of the said William Jones, before me, or some other of Her Majesty's justices of the peace in and for the said county of Kent, to be disposed of and dealt with according to law.

The constable searched the plaintiff's boxes in the presence of Mr. Wood, who identified and claimed as his property a certain number of articles found in the plaintiff's boxes.

The constable then arrested the plaintiff upon a charge of stealing those articles, and he was committed, upon a charge of stealing those goods, for trial at the quarter sessions. At the quarter sessions Mr. Wood offered no evidence against the plaintiff, and he was discharged.

The plaintiff then brought this action against the defendant, upon the ground that the defendant had no jurisdiction to issue the warrant.

The Larceny Act, 1861 (24 & 25 Vict. c 96) provides :

Sect. 103. . . . If any credible witness shall prove upon oath before a justice of the peace a reasonable cause to suspect that any person has in his possession, or on his premises any property whatsoever on or with respect to which any offence, punishable either upon indictment or upon summary conviction by virtue of this Act, shall have been committed, the justices may grant a warrant to search for such property as in the case of stolen goods.

At the trial by the the Lord Chief Justice with a jury, the jury assessed the damages at 15*l.* if the defendant was liable for trespass to the plaintiff's goods only, and at 75*l.* if the defendant was liable also for the arrest.

The question of liability was reserved for further consideration, and the Lord Chief Justice then gave judgment for the defendant (75 L. T. Rep. 161).

The plaintiff appealed.

*Lawson Walton*, Q.C. and *A. Gill* for the appellant.—The defendant had no jurisdiction to grant the warrant, because the information did not allege that the goods had been stolen. Even if it was not necessary that there should be an allegation that the goods had been stolen, the information does not aver that the applicant had reasonable cause to suspect that the goods had been stolen. The information was also insufficient and the warrant was bad because no goods were specified. They cited *Entick v. Carrington* (2 Wils. 275); *M'Donald v. Bulwer* (13 Ir. C. L. Rep. 549); *Lawrenson v. Hill* (10 Ir. C. L. Rep. 177); *Lindsay v. Leigh* (11 Q. B. 455).

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GERMAN.

1897.

Justice of the  
peace—  
Jurisdiction—  
Search-  
warrant—  
Information  
—Sufficiency  
of allegations.

*Carson*, Q.C. and *Hohler* for the respondent.—The information is sufficient to enable a justice of the peace to grant a search-warrant if there is an allegation of reasonable cause to suspect that the goods have been stolen: (*Elsee v. Smith*, 1 D. & R. 97). The information is sufficient if it can by a reasonable intentment be said to aver a suspicion of felony: (*Lawrenson v. Hill*, 10 Ir. C. L. Rep. 177, 194). A justice of the peace is not liable for acting upon an information which may be somewhat defective; he is not liable for a mere error in judgment: (*Mills v. Collett*, 6 Bing. 85.) It is not necessary that the information and warrant should specify the goods, because it may often be impossible to do so.

*Lawson Walton*, Q.C. replied.

*Cur. adv. vult.*

Jan. 29.—Lord ESHER, M.R.—This was an action against a justice of the peace to recover damages for trespass to goods and for false imprisonment. A sworn information was laid before the justice, which was intended to be an information stating that a servant of the person laying the information was about to leave his service and go away with his boxes, and that the master desired to see whether any of his property was in the boxes, and to have a search-warrant issued for that purpose. The justice granted a search-warrant, and the servant was detained and his boxes were searched. There was nothing in his boxes which would justify his detention, only a few trifling things. The servant brought this action against the justice upon the ground that the justice had no jurisdiction to do what he had done. The defence is that the justice had jurisdiction, and that it is immaterial whether he acted rightly or not. It was held by the Lord Chief Justice, at the trial, that the justice had jurisdiction, and that the action must fail. It has been argued before us that the justice had no jurisdiction. I am of opinion that enough appeared on the face of the sworn information, and from the allegations made before the justice to show the justice that he was asked to grant a search-warrant under sect. 103 of the Larceny Act, 1861 (24 & 25 Vict. c. 96). The justice accepted the responsibility of acting upon that information, and determined the matter in the way in which he did. It is argued that the information was not in proper form. It may be that there



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were defects in the form of the information, and that it was irregular. If, however, there was enough to show the justice that he was called upon to act judicially, it is not to the purpose to show that he might have dismissed the application for irregularity, for that does not affect his jurisdiction. I am of opinion that the justice had jurisdiction, and that he intended to exercise that jurisdiction, and that he exercised it in good faith. There was, therefore, no case against the justice, and the action properly failed. This appeal must be dismissed.

LOPES, L.J.—I think that the search-warrant in this case was issued under the inherent power possessed by a justice of the peace, and not under sect. 103 of the Larceny Act (24 & 25 Vict. c. 96). The sworn information laid before the justice was as follows :—"That he hath just and reasonable cause to suspect, and doth suspect, that William Jones, of Brasted, has in his possession certain property belonging to the said Thomas Wood, and doth depose that the said William Jones has been in his employ for five years, and is now under notice to quit, and that he has requested the said William Jones to allow him to search several boxes which he, the said William Jones, has had packed ready to be taken away, but which he refuses to be looked through." The defendant, the justice before whom that information was laid, issued a warrant to a constable to search for the goods, and if such goods were found, to arrest William Jones. It is said that the justice had no jurisdiction, upon that information, to issue the search-warrant, because it was not alleged in the information that any larceny had been committed, and because no particular goods were named. It is replied that it was not necessary to mention any particular goods or to make oath that a felony had been committed, though a mere surmise might not be sufficient. I think that it is clear upon the authorities that, if the fair intent to be collected from the information is that the party has reasonable grounds to suspect that the goods have been feloniously dealt with, that is sufficient. The chief authority is *Elsee v. Smith* (1 D. & R. 97). In that case Abbot, C.J. said: "It need not be a positive and direct averment upon oath that the goods are stolen in order to justify the magistrate in granting his warrant. There are many cases in which a cautious man might not choose to swear that his property is stolen, nevertheless he might have great reason to suspect a particular party, and the magistrate would be well warranted in granting his search-warrant. Suppose the case of a horse which has been lost by its owner and is found in the possession of another person, the owner in that case might not like to take upon himself to swear that the horse has been stolen, for it may have strayed; but when he finds that his horse is concealed in the stable of another person, he may very naturally conclude that it must be stolen, from the circumstances of the concealment, and therefore he may conscientiously swear that he suspects it to have been

stolen. If, under such circumstances the magistrate is not authorised in issuing his search warrant, it might happen in many cases that felonies would go undetected." That means that it is sufficient if the information alleges that the party suspects that the goods have been stolen. Let us, then, look at the information in the present case. Is it a fair intendment that the master suspected that his servant had stolen his goods? In my opinion that is the fair intendment. Suppose an action for libel had been brought upon such a statement as that contained in this information, and that the innuendo laid was that it meant that the master suspected, and had reasonable grounds to suspect, that his goods had been stolen, the jury would certainly be told that the innuendo was proved. I think, therefore, that the information does state that the master had reasonable grounds to suspect, and did suspect, that his servant had stolen his goods. The magistrate had jurisdiction, and this action could not be sustained. The appeal fails and must be dismissed.

RIGBY, L.J. concurred.

*Appeal dismissed.*

Solicitor for the appellant, *C. Everett*.

Solicitors for the respondent, *Routh, Stacey, and Castle*, for *Knocker, Knocker, and Holcroft*, Sevenoaks.

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v.  
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1897.

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peace—  
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Information  
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of allegations.*

## QUEEN'S BENCH DIVISION.

*Jan. 12 and 15, 1897.*

(Before WRIGHT and BRUCE, JJ.)

MORRIS (app.) v. HOWDEN (resp.). (a)

*Merchant Shipping Act, 1894—Passage broker—Person acting as  
—Receipt of money for passage in ship—Sale or letting of  
steerage passages—57 & 58 Vict. c. 60, ss. 320, 341, 342.*

*The respondent undertook for the sum of 22l., paid to him by C., to  
place C.'s son as a farm pupil with a farmer in Canada, and  
out of the 22l. to procure for him a second-class steamship*

(a) Reported by W. W. ORR, Esq., Barrister-at-Law.

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v.

HOWDEN.

1897.

Merchant  
Shipping Act,  
1894—

Passage broker  
—Receipt of  
money for  
passage—

Sale or letting  
of steerage  
passage—

57 & 58 Vict.  
c. 60, ss. 320,  
341, 342.

passage from Liverpool to Quebec, and thence by rail to his destination, but at the time no particular ship was named. Some days afterwards the respondent forwarded a contract ticket for a passage on a named ship which was to leave at a specified time, for which he paid 8l. This contract ticket was procured by the respondent from, and the 8l. named therein was paid by him to, duly authorised passage brokers who had obtained the same from the shipowners.

The respondent made a small profit out of the 22l., but made no profit out of the sum paid for the contract ticket.

Held, that the sale or letting of passages contemplated by sect. 341 of the Merchant Shipping Act, 1894, meant a sale or letting of a passage in a named ship to commence at a definite time for a specified voyage, and that, as the agreement made by the respondent was merely an agreement to procure a passage at a convenient time in a fitting ship, it was not an agreement for the sale or letting, and that the procuring the contract ticket was not the sale or letting of a passage within sect. 341, and that the respondent, therefore, had not acted as a passage broker within sect. 342.

Held also, that the respondent had not received money in respect of a passage in any ship within sect. 320, as the receipt of money in that section meant a receipt of money paid for a specified passage at a fixed time in a named ship.

CASE stated by the stipendiary police magistrate for the city of Sheffield.

Two informations were preferred by the appellant, who was duly authorised by the Board of Trade in that behalf, against the respondent, Henry Howden, an accountant at Liverpool.

The first information charged that the respondent, on the 12th day of May, 1896, at Liverpool,

Did unlawfully act as a passage broker by being concerned in the sale of a steerage passage for one Ernest William Craven in an emigrant ship, proceeding from the British Islands to a place out of Europe not being within the Mediterranean Sea, without being duly licensed, contrary to sect. 342 of the Merchant Shipping Act, 1894.

The second information charged that at the same time and place the respondent

Did unlawfully receive from one James Craven the sum of 8l. 18s. 11d. for and in respect of a passage for Ernest William Craven as steerage passenger in an emigrant ship . . . without giving to the said James Craven for Ernest William Craven a contract ticket signed by or on behalf of the owners, charterer or master of the ship, and in the form required by sect. 320 of the Merchant Shipping Act, 1894.

The facts proved or admitted were as follows :

Ernest William Craven was a young man, about seventeen years of age, who was desirous of being placed as a farm pupil upon a farm in Canada. He was the son of Mr. James Craven referred to in the second information.

The respondent was secretary to "The Anglo-Canadian Farm

Pupil Association," named at the head of the letters written by him in the matter; neither he nor his association could act as a passage broker without offending against sect. 342 of the Act.

On the 6th day of May the respondent wrote a letter to Ernest Craven inclosing rates for placing, &c., which were as follows: First, including saloon passage and first-class rail fare, 27*l.*; second, including saloon passage and second-class rail fare, 25*l.*; third, including intermediate passage and second-class rail fare, 22*l.*; fourth, including steerage passage and second-class rail fare, 18*l.*; and the letter stated that these rates included steamship fares from Liverpool, and also rail fares to destination in Ontario, with the respondent's charges for placing and supervision of the pupil for one year.

Between the 6th and 12th days of May choice was made of "Third, including intermediate passage and second-class rail fare, 22*l.*" named in the paper of rates, and 22*l.* was paid by Mr. James Craven, the father, to the respondent, and a document dated the 12th day of May was given to Mr. James Craven.

This document of the 12th day of May was as follows:

Received from Mr. James Craven, of, &c., the sum of 22*l.*, the same being a premium for which we undertake to place his son, Mr. Ernest William Craven, who is now seventeen years of age, as a farm pupil in Western Ontario, Canada, with a good farmer there, where he will be treated as one of the family, and have as comfortable a home as farmers in that district usually have, and be practically taught Canadian farming, receiving also his board and lodging, and in addition thereto, pay in proportion to the value of his services. It is expected that he will remain with the farmer upon the above terms for twelve months, but this arrangement is entirely based upon the reciprocal promise that he is to conduct himself properly and diligently aid in the work of the farm. It is distinctly understood that the above-named sum includes second class steamship passage from Liverpool to Quebec, and second class rail to Thamesville, together with the charges of this association for placing, and for the after supervision of Ernest William Craven, but it does not include any bonus or bribe to the farmer, who has agreed to receive the pupil without any such payment, on the express conditions that the pupil is recommended by this association, and that he has given a written undertaking stating that he goes to the farm prepared to work in the same manner as the farmers and their sons do in the district where he is located. This association will not be responsible for any consequences which may arise from disobedience, intemperance, or misconduct on the part of the pupil, or physical incapacity arising from any cause whatsoever.

On the 18th day of May the respondent wrote a letter to Mr. Ernest Craven, giving full instructions for the journey out, and inclosing a passenger's contract ticket for a passage from Liverpool to Montreal, *viâ* Quebec, in the Allan Line steamship *Mongolian*, which was to sail from Liverpool on the 21st day of May. This contract ticket was in due and regular form, and was duly signed on behalf of the owners of the ship. The contract ticket was obtained by the respondent from, and the 8*l.* 18*s.* 11*d.* named in the contract ticket was paid by the respondent to Messrs. Thomas Cook and Sons, through their agent at their office in Sheffield, and Messrs. Thomas Cook and Sons were duly authorised to act as passage-brokers, and the agent in question was duly appointed their passage-broker's agent within sect. 342 of the Merchant Shipping Act, 1894. The sum of 8*l.* 18*s.* 11*d.*,

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HOWDEN.

1897.

Merchant  
Shipping Act,  
1894—

Passage broker  
—Receipt of  
money for  
passage—

Sale or letting  
of steerage  
passages—

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which was paid by the respondent for the contract ticket, was paid by him out of the 22*l.* paid to him by Mr. James Craven.

It did not clearly appear what the “Anglo-Canadian Farm Pupil Association” was, but the respondent, as its secretary, did not dispute his own liability for breach (if any) of the Act in what he did as its secretary.

The defendant’s association or himself had a profit in the 22*l.*, the amount of which did not appear; but it was said that none was directly made in any way on either the steamship fare, or the rail fare, nor did the respondent get any commission in any way from the shipping people. Passengers carried under contract tickets such as that now in question are not messed throughout the voyage at the same table with the master or first officer of the ship.

The magistrates dismissed both informations. As to the first information, the magistrate was of opinion that, as Ernest Craven was not, when a passenger on the *Mongolian*, to mess at the same table with the master or first officer, he was not to be deemed a cabin passenger, but a steerage passenger, and that therefore his passage was rightly said by the appellant to be a steerage passage (see sect. 268 (3) (b) and (4) of the Act of 1894. He was of opinion that, in the negotiations that had taken place, Messrs. Thomas Cook and Sons had acted as the passage-broker in the sale of a steerage passage by the owners of the ship to Ernest Craven, and that, if Messrs. Cook and Sons had not been duly qualified, they would have rendered themselves liable to a penalty under sect. 342; but that the respondent had not, directly or indirectly, acted as a passage broker, and that the agreement between the parties was, in fact, an agreement by the respondent to take 8*l.* 18*s.* 11*d.* of the 22*l.* to the qualified passage-brokers, Messrs. Thomas Cook and Sons, for them to make a passage contract between the shipowners and Ernest Craven, a transaction which would not make the respondent liable within the section.

With regard to the second information the magistrate thought that, although the respondent received the 8*l.* 18*s.* 11*d.* from James Craven, sect. 320 applied, under the circumstances, to Messrs. Thomas Cook and Sons rather than to the respondent, and, as they had duly satisfied and complied with the provisions of the section, it was sufficient.

The question was whether, upon the facts stated, the respondent was guilty of either of the offences charged in the informations.

The Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), provides:—

Sect. 341.—(1.) Any person who sells or lets or agrees to sell or let, or is otherwise concerned in the sale or letting of steerage passages in any ship proceeding from the British Islands to any place out of Europe not within the Mediterranean Sea shall for the purposes of this part of this Act be a passage broker.

Sect. 342.—(1.) A person shall not act directly or indirectly as a passage broker, unless he—(b) holds a licence for the time being in force to act as passage broker.



4.) There shall be exempted from this section—(a) the Board of Trade, and any person contracting with them or acting under their authority; and (b) any passage broker's agent duly appointed under this Act. (5.) If any person fails to comply with any requirements of this section, he shall for such offence be liable to a fine not exceeding fifty pounds.

Sect. 320.—(1.) If any person, except the Board of Trade and persons acting for them and under their direct authority, receives money from any person for or in respect of a passage as a steerage passenger in any ship, or of a passage as a cabin passenger in any emigrant ship, proceeding from the British Islands to any port out of Europe and not within the Mediterranean Sea, he shall give to the person paying the same a contract ticket signed by or on behalf of the owner, charterer, or master of the ship, and printed in plain and legible characters. (2.) The contract ticket shall be in a form approved by the Board of Trade and published in the *London Gazette*. . . . (3.) If any person fails to comply with any requirements of this section, he shall for such offence be liable to a fine not exceeding fifty pounds.

*Bonsey* for the appellant.—The respondent ought to have been convicted on both informations. The contention is that the respondent, in acting as he did in this case, was acting in contravention of both sections of the Act. He was acting as a passage broker within sect. 342 without having the necessary licence, and he received money in respect of a passage of a steerage passenger within the meaning of sect. 320. If the respondent had done this business merely as an act of friendship and not for profit, and if he had made no profit, then the case would not have been within the Act; but here he made a profit on the 22*l.* received by him, though the amount of such profit does not appear. The money paid to the respondent merely left the pupil at the farmer's house in Canada, and left him to make his own terms with the farmer. It merely paid the expenses of the passage of going out, together with a little over. This small sum that was over the actual passage money was the profit of the respondent, so that the respondent did not do this for friendship but for profit, which shows that he was acting as a passage broker within sect. 342, and, by receiving the 22*l.*, without at the same time giving a contract ticket, he was acting in contravention of sect. 320.

The respondent did not appear.

*Cur. adv. vult.*

*Jan. 15.*—The judgment of the Court (Wright and Bruce, JJ.) was read by

BRUCE, J.—The principal question in this case is, whether the respondent Howden acted directly or indirectly as a passage broker within the meaning of sect. 342 of the Merchant Shipping Act, 1894. The meaning of "passage broker" is to be ascertained by reference to sect. 341, which defines a passage broker to be "any person who sells or lets, or agrees to sell or let, or is any-wise concerned in the sale or letting of steerage passages in any ship proceeding from the British Islands to any place out of Europe not within the Mediterranean Sea." Looking at the other sections of the statutes bearing upon the matter, and to the forms contained in the schedule to the Act relating to passage brokers and to steerage passengers, I think that the section of the Act referred to means a selling or letting in a named ship of a passage to commence at a definite time for a specified voyage.

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Passage broker  
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I am therefore of opinion that the agreement entered into on the 12th day of May, of which the written receipt of that date signed by the respondent is evidence, was not an agreement for selling or letting a passage within the meaning of sect. 341. The respondent undertook, for the sum of 22*l.*, to place Ernest William Craven as a farm pupil in Western Ontario, and out of the 22*l.* to procure for him a second-class steamship passage by sea from Liverpool to Quebec, and a passage by rail to Thamesville. That was, I think, an agreement to procure him a passage at some convenient time in some fitting ship from Liverpool to Quebec, but it was not a selling or letting, or an agreement to sell or let a passage at a definite time in a named ship; and, although the passage ultimately obtained was a steerage passage, I am not at all sure there is anything in the letter of the 6th day of May, or in the receipt of the 12th day of May, to show that the intermediate passage, or the second-class steamship passage, in those documents referred to, is a steerage passage within the meaning of sect. 341 of the Merchant Shipping Act, 1894. On the 18th day of May the respondent seems to have received information that E. W. Craven was ready to leave at once, and apparently on the same day the respondent obtained from Mr. Robinson, who acted as agent for Messrs. Cook and Sons and for Messrs. Allan, a passenger contract ticket for a passage for E. W. Craven, on board Messrs. Allan's steamship *Mongolian* from Liverpool to Montreal, *viâ* Quebec. Messrs. Cook and Sons were duly qualified as passage brokers, and Mr. Robinson was duly appointed as their agent. This ticket was forwarded to E. W. Craven on the same day—the 18th day of May. E. W. Craven therefore received a contract ticket made out in due form, signed by the authorised agent of Messrs. Cook and Sons, which conferred upon him all the advantages which the Merchant Shipping Act has provided for the security of steerage passengers. But it is said that this contract ticket was a selling or letting of a steerage passage in a ship within sect. 341, and that the respondent was concerned in the selling or letting. No doubt the respondent procured the ticket, and paid 8*l.* 18*s.* 11*d.* for it out of the 22*l.* mentioned in the receipt of the 12th day of May, but the respondent made no profit out of the ticket, and received no commission from the shipowners or from the passage brokers. So far as the act of the respondent was concerned, it seems to me that what he did was to purchase, as agent for James Craven, a ticket for a passage for E. W. Craven. I think it must be conceded that a person who, as a mere act of friendship paid for and procured a passenger ticket for another could not be said to be concerned in the contract of sale or letting contained in the passenger ticket. To be concerned in a sale or letting means, I think, to have a part or share in the sale or letting; to have something to do with the sale or letting; to have some interest in this transaction, or in some way to derive some profit or advantage from it. In *Todd v. Robinson* (52 L. T. Rep. 120; 14 Q. B. Div. 739), the Court of

Appeal seems to have thought that a person might be interested in a contract and yet not concerned in it. In the present case the respondent seems to have been a passive agent paying on behalf of Craven for the ticket, and forwarding it to him. If the father, James Craven, had purchased of Messrs. Cook and Sons, through their authorised agent, a ticket for his son E. W. Craven, he would not, I think, have been guilty of any breach of the provisions of sect. 341, and, as regards the act of the purchase of the ticket, I cannot see upon what principle it is possible to distinguish between the purchase of a ticket by a father for a son, and the purchase made by the respondent in this case. It is said that the respondent, or those on whose behalf he acted, made a profit out of the 22*l.* But we are dealing only with the 8*l.* 18*s.* 11*d.* paid for passage money, and out of that there was no profit. It seems to me that it would be straining the language of sect. 341 to hold that the respondent was concerned in the sale or letting of the passage. I therefore think that the learned magistrate was right in refusing to convict of an offence under sect. 342. I also think the magistrate was right in refusing to convict under sect. 320. The respondent did give to Craven a contract ticket duly signed on behalf of the owners of the ship. But, further, I am not satisfied that he received money for Craven for, or in respect of, a passage in any ship within the meaning of sect. 320. It seems to me to be clear that this section must mean a receipt of money paid for a specified passage, commencing at a fixed time in a named ship. The 22*l.* which the respondent received was not paid to him in respect of a passage in any named ship, and it would have been impossible for the respondent, at the time he received the 22*l.*, to have procured a contract ticket such as is mentioned in sect. 320. In coming to this conclusion, I have not overlooked sect. 347 of the Merchant Shipping Act, 1894, which seems to be directed to acts such as the acts complained of in this case.

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57 & 58 Vict.  
c. 60, ss. 320  
341, 342.

*Appeal dismissed.*

Solicitor for the appellant, *The Solicitor to the Board of Trade.*

## QUEEN'S BENCH DIVISION.

*Wednesday, Oct. 16, 1896.*

(Before WILLS and WRIGHT, JJ.)

HINDLE (app.) v. BIRTWISTLE (resp.) (a)

*Factories and workshops — Dangerous machinery — Fencing—  
Factory and Workshop Act, 1878 (41 Vict. c. 16), s. 5 (3)—  
Factory and Workshop Act, 1891 (54 & 55 Vict. c. 75),  
s. 6 (2).*

*Machinery may be dangerous within sect. 5 (3) of the Factory and Workshop Act, 1878 (41 Vict. c. 16), as amended by sect. 6 (2) of the Factory and Workshop Act, 1891 (54 & 55 Vict. c. 75), although it is machinery from the use of which no danger would arise were it worked with absolute care. Whether machinery is or is not dangerous within that enactment depends upon whether or not there is in the ordinary course of things a substantial probability of danger arising from its use; and this is in all cases a question of fact and degree.*

**A**PPEAL by case stated from the decision of the Recorder of Blackburn, reversing the decision of the justices of Blackburn.

On the 3rd day of October, 1895, Ephraim Hindle and George Hindle appeared before the justices of Blackburn on an information under the Factory and Workshop Acts, 1878 and 1891, laid by Birtwistle, one of Her Majesty's inspectors of factories, charging "that they, on the 7th day of August, 1895, at the said borough, being then and there the occupiers of a certain cotton factory, the same being a factory within the true intent and meaning of the said Acts, did unlawfully fail to keep such factory in conformity with the said Acts by then and there neglecting to fence a certain dangerous part of the machinery in such factory, to wit, shuttles, such shuttles not being in such a position or of such construction as to be equally safe to every person employed in the said factory as they would be if they were securely fenced. The justices convicted the defendants, and fined them 20s. The defendants appealed to quarter sessions, where the Recorder quashed the conviction, subject to a case stated.

The Factory and Workshop Act, 1878 (41 Vict. c. 16) enacts:

Sect. 5. With respect to the fencing of machinery in a factory the following provisions shall have effect. . . . (8) Every part of the mill gearing shall either be

(a) Reported by J. ANDREW STRAHAN, Esq., Barrister-at-Law.

securely fenced, or be in such position or of such construction as to be equally safe to every person employed in the factory as it would be if it were securely fenced.

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The Factory and Workshop Act, 1891 (54 & 55 Vict. c. 75) enacts :

Sect. 6.—(2.) In sub-sect. 3 of the same section (i.e., sect. 5 of the Factory and Workshop Act, 1878), before the words "every part" shall be inserted the words "all dangerous parts of the machinery and."

*Factory and  
Workshops  
Acts, 1878  
and 1891—  
Dangerous  
Machinery—  
Fencing—*

The following were the facts of the case as found by the learned Recorder :

The appellants—Messrs. Hindle—on the 7th day of August, 1895, were and for several years continuously theretofore had been the occupiers of a certain weaving shed in Blackburn, in which there were the ordinary looms and shuttles used in weaving cotton cloth. It was admitted that the shed was a factory within the meaning of the Factory and Workshop Acts, 1878 and 1891. On the 7th day of August a shuttle flew out of the shuttle-race of one of the looms in work in the said factory, and in its flight struck and seriously injured a weaver in the employment of the appellants. The accident was caused by the negligence of the said weaver in fastening the picking band of the loom too taut, whereby the shuttle was deflected from its proper course in the shuttle-race, and so flew out.

41 Vict. c. 16,  
s. 5 (3) ;  
54 & 55 Vict.  
c. 75, s. 6 (2).

In addition to this accident there were during the years 1891 to 1895, both inclusive, three other serious accidents caused by shuttles flying from looms in the appellants' factory, but to what cause or causes the said accidents were to be attributed there was no evidence to show. During the said period and down to the 7th day of August, 1895, there were 1400 looms or thereabouts in work during most working days in the factory; and it was agreed, so far as the looms and shuttles were concerned, that the appellants' machinery was in much the same condition all through the said period up to and including the 7th day of August, 1895.

It was proved that while the shuttle is working in due course it is not dangerous, but occasionally shuttles do fly out from the shuttle race during the process of weaving under circumstances which do render such flying shuttles dangerous to any person who may chance to be in the line of their flight, and the evidence went to show that the flying out of the shuttles from the shuttle race is due to one or other of the following causes : (a) in consequence of the shuttle not being true ; (b) in consequence of the negligence of the weaver in fastening the picking band too taut, or some other act of negligent user of the machinery by the person in charge of it ; (c) in consequence of some foreign substance accidentally getting into the shuttle race ; (d) in consequence of some defect in the yarn or thread used in the loom.

It was not suggested that the appellants' looms or any of them were at any time during the period before mentioned, or

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s. 5 (3);  
54 & 55 Vict.  
c. 75, s. 6 (2).*

on the said 7th day of August, fitted with shuttles that were not true, nor was there any evidence that the appellants omitted any reasonable precaution to prevent foreign substances getting in the yarn or thread, or that there was in fact any foreign substance in the shuttle race of any of the appellants' looms, or any defect in any of the yarn or thread used in their looms, during the same period or on the 7th day of August.

The question for the opinion of the Court was whether the fact that the appellants' looms and shuttles were on the 7th day of August liable to become temporarily dangerous (a) either by some negligent act of the person in charge of the said looms, or (b) by some foreign substance getting into the shuttle race, or (c) by some defect in the yarn or thread used in the process of weaving, rendered such looms or shuttles dangerous machinery, or dangerous parts of machinery within the meaning of the Factory Acts, 1878 and 1891. If the Court was of opinion that it did the learned Recorder's decision was to be reversed. If the Court was of a contrary opinion, his decision was to stand.

*The Attorney-General* (with him *H. Sutton* and *L. Sanderson*) for the respondent.—The point in question in this case is, was the learned recorder right in holding that provided machinery is not dangerous in itself without negligence either on the worker's or owner's part, it is not dangerous machinery within the Acts, and need not therefore be fenced. That this was the principle on which he had decided the case was rendered clear from the language used by him in his judgment. He there laid it down that the employer is responsible only for machinery which is, in itself, dangerous in the ordinary course of careful working. [WILLS, J.—Surely the question whether or not machinery is or is not dangerous is one of degree, and therefore of fact?] It was not necessary to deny that. Here, however, the Recorder proceeded on no such view. He held the machinery could not be dangerous, because if worked with absolute care by manufacturer and workmen, it would not be dangerous. Absolute care on all hands could not and should not be assumed. Certain acts of negligence were certain to happen with the most careful of men, and the whole question was, assuming these acts to occur with the usual frequency, would the results be of such a character as to make the machinery dangerous within the Acts? Here it was true only four serious accidents occurred in this factory with some 450 workers in five years, but it was to be remembered that probably those were not all the accidents resulting from this cause. The employers were bound to report only serious—not slight—accidents, and these were the accidents reported by them. In the years 1893, 1894, and 1895, there were reported thirteen, seventeen, thirteen serious accidents in the town of Blackburn from the same cause.

Sir *E. Clarke* (*E. Sutton* with him) for the appellants admitted that if a machine was so constructed that it was in need of constant attention, and with ordinary user was liable to cause

accident, the machine was dangerous. He admitted also that occasional carelessness was to be assumed. But he contended that the learned Recorder here did take into account the extreme rarity of accidents resulting from this cause. Here there were 1400 shuttles in this factory. During five years these shuttles—taking ordinary working days and ordinary number of movements for each shuttle—must have moved backwards and forwards some 76,000 millions of times. During these movements they left the shuttle race four times—causing serious injury to the worker. The Attorney-General had pointed out that these were all serious accidents, but under sect. 18 of the Factory and Workshop Act, 1895, any accident is a serious accident, and must be reported if it causes to any person employed in the factory or workshop such bodily injury as to prevent him on any one of the three working days next after the occurrence of the accident being for five hours on his ordinary work. Even under the principal Act all accidents were serious which incapacitated the worker for two days. The results here, therefore, even from negligence or other cause outside the machinery were very slight, while the machinery itself was not dangerous in working at all.

The *Attorney-General* in reply.—The number of accidents in proportion to the movements of the shuttle was of no importance. The important point was that in the course of five years one out of every hundred workers in this factory was seriously injured by shuttles flying out. He referred to *Redgrave v. Lloyd and Sons*, 72 L. T. Rep. 565; (1895) 1 Q. B. 876.

WILLS, J.—This case is no doubt one of considerable importance. Still I can see no benefit in reserving judgment since the enactment seems to be plain and intelligible, and I feel no difficulty in construing it, nor would I in applying it if the facts of the case were fully before me. The learned recorder gives the reason of his decision in one sentence in which he says that “the manufacturer is only responsible for machinery which is in itself dangerous in the ordinary course of careful working. He appears to think that no machinery can be dangerous within the Act unless it is dangerous in itself however carefully worked. I altogether disagree with such an interpretation, which would limit materially and disastrously the operation of a most beneficial Act of Parliament. It seems to me that machinery is dangerous, if in the ordinary course of human affairs danger may reasonably be anticipated from it when it is worked without protection. To say that because accidents have happened through its use therefore it must be dangerous, is wrong. To say that because no accidents would happen if it were worked with absolute care therefore it cannot be dangerous, is also wrong. In considering whether machinery is dangerous, the contingency of carelessness on the part of workmen in charge of it, the frequency with which such contingency is likely to occur, and all other matters likely to make the

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machine become dangerous, are to be taken into consideration. If, taking what is reasonably certain to happen, the Court thinks there is a substantial probability that accidents will result from the machinery, the machinery is dangerous within the Act, and the Court should convict. That whole thing is a question of degree. The Court must in each case decide on the facts as proved before it. As the learned recorder does not seem to have applied his mind to that point, I think the case must go back to him for reconsideration.

WRIGHT, J.—I am of the same opinion. The justices, who are presumably persons acquainted with these matters, came to the conclusion that these shuttles were dangerous. The recorder reversed their decision on a view of the law which I think is erroneous. The chance of foreign matter getting into the machinery, the chance of defects in the yarn or negligence in the workers, are all to be taken into consideration, but none of them is in itself conclusive. The mere fact that any of these may cause the shuttle to fly out, and that when it flies out it is dangerous, is not conclusive either. The Court must consider whether the tendency it has to fly out is a tendency to fly out often enough to satisfy a reasonable interpretation of the word “dangerous.” The whole question is one of degree and of fact in all cases.

*Case remitted to the Recorder.*

Solicitors for the appellants, *Rowcliffes and Rawle*, for *Carter*, Blackburn.

Solicitor for the respondent, *Solicitor to the Treasury*.

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## QUEEN'S BENCH DIVISION.

*Monday, Jan. 18, 1897.*

(Before WRIGHT and BRUCE, JJ.)

VALLENCY (app.) v. FLETCHER (resp.). (a)

*Brawling—Perpetual curate—Violent and indecent conduct in parish churchyard—Liability to Temporal Court—23 & 24 Vict. c. 32, s. 2.*

*Sect. 2 of 23 & 24 Vict. c. 32 applies not only to persons not in holy orders, but also to persons in holy orders, and a clergyman*

(a) Reported by J. ANDREW STRAHAN, Esq., Barrister-at-Law.

*whose conduct in his own church or churchyard is riotous, violent, or indecent, may be convicted of an offence under it.*

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1897.

CASE stated by justices of Derbyshire.

The perpetual curate of the parish of Rosliston was summoned before the justices on a charge of violent and indecent behaviour in the churchyard of his own parish church, under sect. 2 of 23 & 24 Vict. c. 32, which enacts that :

Brawling—  
Curate—  
Violent  
conduct in  
churchyard —  
23 & 24 Vict.  
c. 32, s. 2.

Any person who shall be guilty of riotous, violent, or indecent behaviour in England or Ireland, in any cathedral, church, parish or district church or chapel of the Church of England and Ireland, or in any chapel of any religious denomination, or in England in any place of religious worship duly certified under the provisions of the eighty-first chapter of the statute passed in the session of Parliament of the eighteenth and nineteenth years of the reign of her present Majesty, intituled "An Act to amend the Law concerning the certifying and registering of Places of Religious Worship in England," whether during the celebration of divine service or at any other time, or in any churchyard or burial-ground, or who shall molest, let, disturb, vex, or trouble, or by any other unlawful means disquiet or misuse any preacher duly authorised to preach therein, or any clergyman in holy orders ministering or celebrating any sacrament or any divine service, rite, or office in any cathedral, church, or chapel, or in any churchyard or burial-ground, shall, on conviction thereof before two justices of the peace, be liable to a penalty of not more than five pounds for every such offence, or may, if the justices before whom he shall be convicted think fit, instead of being subjected to any pecuniary penalty, be committed to prison for any time not exceeding two months.

At the hearing before the justices evidence was given showing that the curate had ordered that the grave of a certain person should be levelled. The deceased's relatives (with some of whom the curate had quarrelled) having been informed of this, came to the graveyard while the workman was engaged in carrying out the curate's orders. The curate was also present, and he threatened the relatives with a revolver and a large stick if they ventured to interfere with the work. A violent altercation followed. On this evidence the justices held that the curate had been guilty of both violent and indecent conduct in his own churchyard, and had convicted him. The curate asked to have a case stated, to which application the justices acceded.

*Simpson* for the curate.—The conviction should be quashed on two grounds. In the first place, the magistrates had no jurisdiction to hear the charge. The 23 & 24 Vict. c. 32, does not apply to clergymen. Prior to its passing both clergymen and laymen were subject to the Ecclesiastical Courts in respect to charges of brawling, and the object of the Act was to remove such charges when made against laymen from the jurisdiction of the Ecclesiastical Courts to that of the temporal courts. It was never intended to refer to clergymen. This is clear from the preamble. [BRUCE, J.—It is clear the primary object of the Act was to exempt persons not in holy orders from the jurisdiction of spiritual courts, but the words of the Act are general. In sect. 2 the words used are "any person."] That must be read any person not in holy orders. In the second place, the curate here was acting under a *bonâ fide* claim of right. The church-

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yard he held to be his own freehold, and he considered he was entitled to do as he liked in it: (*Bryan v. Whistler*, 8 B. & C. 288). [WRIGHT, J.—The whole question is one of fact, with the exception of the point whether 23 & 24 Vict. c. 32, applies. Even if the appellant was doing an act which was legal, he was bound to do it decently, and neither violently nor riotously. Here there is ample evidence to show that he did it indecently, violently, and riotously. At any rate, in the face of such evidence we cannot inquire into the question.]

*Appleton and Borough*, for the respondent, were not called on.

WRIGHT, J.—The magistrates have found that the appellant has been guilty of indecent and violent behaviour, and there is abundant evidence to support their finding quite irrespective of the question whether he had or had not a right to level the grave. I am far from saying he had any such right, but the only question of law is whether sect. 2 of this Act can apply to a clerk in holy orders in the place where he is clerk. I am of opinion that it can and does. The words of the section are perfectly general, and I can see no reason for cutting them down. No doubt the primary object of the Act was to relieve persons not in holy orders from the jurisdiction of the Ecclesiastical Courts, but there is nothing to limit the jurisdiction given to the temporal Courts to these.

BRUCE, J.—I am of the same opinion. I do not see why the word persons in sect. 2 of the Act should not apply to all persons whether in holy orders or not. Then, if it applies to persons in holy orders, the sole question is whether the appellant's conduct brought him within it. The justices have found on abundant evidence that it did.

*Appeal dismissed.*

Solicitors for the appellant, *S. W. Johnson and Son*, for *Fisher, Jesson, and Wilkins*, Ashby-de-la-Zouch.

Solicitors for the respondent, *Warren, Murton, and Millar*, for *Ransom and Hutton*, Nottingham.

## QUEEN'S BENCH DIVISION.

*Monday, Jan. 18, 1897.*

(Before WRIGHT and BRUCE, JJ.)

MOUNTIFIELD (app.) v. WARD (resp.). (a)

*Licensing Acts—Intoxicating liquors — Sale during prohibited hours to be consumed off premises — Bonâ fide traveller — Licensing Act, 1874 (37 & 38 Vict. c. 49), ss. 9, 10.*

*The exemption as to sales of intoxicating liquors to bonâ fide travellers contained in sect. 10 of the Licensing Act, 1874 (37 & 38 Vict. c. 49) extends only to sales to such persons of intoxicating liquors to be consumed on the premises.*

CASE stated by justices of Middlesex.

On the 19th day of July, 1896, the respondent was the holder of a licence to sell intoxicating liquors on or off the premises of a public-house known as the Duke's Head. That day was Sunday, and on the morning of it about eleven o'clock, and therefore during prohibited hours, two men came to it and were admitted to the house. They had with them certain empty bottles which they wished to have filled with beer. The respondent having as the justices found taken all due precautions to ascertain whether the two men were or were not *bonâ fide* travellers, and honestly believing that they were *bonâ fide* travellers, filled the bottles with beer. The two men thereupon went away with the filled bottles, and afterwards they in company with other persons consumed the beer in Waterlow Park. The beer was sold to be consumed off the premises.

The respondent was summoned under sect. 9 of the Licensing Act, 1874, for selling intoxicating liquor on the 19th day of July, 1896, during the time at which premises for the sale of intoxicating liquors were directed to be closed. At the hearing it was contended for the prosecutor that the exemption contained in sect. 10 of the Licensing Act, 1874, did not extend to sales of intoxicating liquors to be consumed off the premises, but the justices being against this contention they dismissed the information.

The prosecutor appealed.

(a Reported by J. ANDREW STRAHAN, Esq., Barrister-at-Law.

MOUNTFIELD v. WARD.  
1897.  
Sect. 10 of the Licensing Act, 1874 (37 & 38 Vict. c. 49) enacts that

*Licensing Acts—Sale of intoxicating liquors—Bond fide traveller—Consumption off premises—*  
37 & 38 Vict. c. 49, ss. 9, 10.  
Sect. 10. Nothing in this Act or in the principal Act contained shall preclude a person licensed to sell any intoxicating liquor to be consumed on the premises from selling such liquor at any time to *bond fide* travellers or to persons lodging in his house: Provided that no person holding a six day licence shall sell any intoxicating liquor on Sunday to any person not lodging in his house. . . . If in the course of any proceedings which may be taken against any licensed person for infringing the provisions of this Act or the principal Act relating to closing, such person (in this section referred to as the defendant) fails to prove that the person to whom the intoxicating liquor was sold (in this section referred to as the purchaser) is a *bond fide* traveller, but the justices are satisfied that the defendant truly believed that the purchaser was a *bond fide* traveller, and further that the defendant took all reasonable precautions to ascertain whether or not the purchaser was such a traveller, the justices shall dismiss the case as against the defendant, and if they think that the purchaser falsely represented himself to be a *bond fide* traveller, it shall be lawful or the justices to direct proceedings to be instituted against such purchaser under the 25th section of the principal Act.

*Danckwerts* for the appellant.—Sect. 10 does not permit the sale of intoxicating liquors even to a *bond fide* traveller during prohibited hours, except where the liquor was sold for the purpose of being consumed on the premises. This is the natural inference from the words of the Act. The words are, “Nothing . . . shall preclude a person licensed to sell intoxicating liquor to be consumed on the premises, from selling such liquor,” &c. “Such liquor” here means liquor “to be consumed on the premises.” Obviously that is the only interpretation which would carry out the object of the Act—to prevent scandal by public drinking during church hours. Besides, if a *bond fide* traveller might buy what he liked and take it away, clearly the publican could not prevent his giving it to other persons not *bond fide* travellers. [WRIGHT, J.—Saying your interpretation is right. is not the respondent covered by the finding of the jury that he took all reasonable precautions to ascertain whether the buyer was or was not a *bond fide* traveller?] No. My argument would apply even if he really were a *bond fide* traveller, and the fact that he has misled the publican cannot improve the publican’s position. I contend that, whether he is or is not a *bond fide* traveller, the sale to him of intoxicating liquor to be consumed off the premises was a breach of sect. 9.

*G. Elliott* for the respondent.—The argument of the appellant amounts to a claim to have words read into sect. 10 which the Legislature have not put there. The Legislature said that, “persons licensed to sell liquor to be consumed on the premises” might supply *bond fide* travellers during prohibited hours. This simply applies to the usual classes of licensed persons—those with full and those with off licences. Those with full licence can sell for consumption both on and off the premises. The words “such liquor” merely mean “intoxicating liquor.” There is no such kind of liquor as “liquor to be consumed on the premises.” The limitation of the exception to persons licensed to sell for consumption on the premises was introduced because those persons represented the old class of innkeepers whose legal duty

was to provide refreshment to travellers. The facts in *Dames v. Bond* (55 J. P. 503) were practically the same as those in this case, and the Court there held that no offence had been committed. [WRIGHT, J.—There the question was whether the purchaser was or was not a *bonâ fide* traveller. This point was not raised. The strongest point against you is that the Act uses the words “such intoxicating liquor.”] Not “such intoxicating liquor,” but “such liquor”—that is intoxicating liquor.

*Danckwerts* in reply.—The provision as to a mistaken belief that the purchaser was a *bonâ fide* traveller was introduced into sect. 10 in order to quiet certain doubts raised in *Roberts v. Humphreys* (29 L. T. Rep. 387; L. Rep. 8 Q. B. 483).

WRIGHT, J.—As to the main question—the construction of the section—I do not think there can be any real doubt. Mr. Danckwerts’ contention is right. The necessity of the case points to the conclusion that the section contemplated a sale for consumption on the premises only; for it is clear that, if the liquor might be sold to a *bonâ fide* traveller not to be consumed on the premises, there can be no security that, once off the premises, it will be consumed by *bonâ fide* travellers; and so the prohibition of sale to anyone but *bonâ fide* travellers might be rendered almost futile. The construction of the words of the section supports this. “Such liquor,” I think, must be taken to refer not merely to “intoxicating liquor” but “intoxicating liquor to be consumed on the premises.” There should then have been a conviction in this case unless the words of the third paragraph of sect. 10 prevented it. That paragraph provides that, “If in the course of any proceedings which may be taken against any licensed person for infringing the provisions of this Act . . . relating to closing . . . the justices are satisfied that the defendant truly believed that the purchaser was a *bonâ fide* traveller, and further that the defendant took all reasonable precautions to ascertain whether or not the purchaser was such a traveller, the justices shall dismiss the case. At first sight that paragraph seems to show that it was intended that a sincere belief that a purchaser was a *bonâ fide* traveller should afford a protection to the defendant in any proceedings for infringing the provisions of the statute relating to closing, which would include proceedings for selling during prohibited hours for consumption off the premises, as well as for selling during those hours for consumption on the premises. But, on second thoughts, I cannot so read this paragraph. It seems to me to apply only to the case of a sale to a person purporting to be a *bonâ fide* traveller under circumstances which, had he been really a *bonâ fide* traveller, would have brought the sale within the exemption in the earlier part of the section. The only kind of sale within that exemption is, as I have said, sale of intoxicating liquors to be consumed on the premises.

BRUCE, J.—I am of the same opinion. I think that the provisions of sect. 10 were never intended to apply to a case like

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MOUNTIFIELD *this. They were intended to enable a *bonâ fide* traveller to*  
*obtain refreshment during travel, not to enable him to lay in a*  
*store of intoxicating liquor to be consumed off the premises—*  
*that can be done only during legal hours. There is no doubt a*  
*difficulty, owing to the wide language used in the third paragraph*  
*of sect. 10. But it seems to me that wide language must be*  
*limited in the way suggested by my brother Wright. To hold*  
*otherwise would be to give a larger protection to a defendant who*  
*sold to a person who, though not a *bonâ fide* traveller, led the*  
*defendant to believe he was, than to a defendant who sold to a*  
*person who really was a *bonâ fide* traveller.*

*Appeal allowed. Case remitted.*

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*— Sale of*  
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*liquors—Bonâ*  
*fide traveller*  
*— Consump-*  
*tion off*  
*premises—*  
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 c. 39, ss. 9, 10.

Solicitors for the appellant, *Wontner and Sons.*  
 Solicitor for the respondent, *A. M. Forbes.*

## QUEEN'S BENCH DIVISION.

*Tuesday, Jan. 19, 1897.*

(Before WRIGHT and BRUCE, J.J.)

REG. *v.* THE CLERK OF ASSIZE OF THE OXFORD CIRCUIT. (a)

*Practice — Coroner — Inquisition setting out special facts — Sufficiency of.*

*A coroner's inquisition stated that injuries caused by a fall into a quarry were the cause of death, and that by the neglect of three named persons to cause the quarry to be fenced the deceased fell therein, and, "that therefore the said three persons did feloniously kill and slay the deceased."*

*Held, that the inquisition was bad on the face of it, and ought to be quashed upon the ground that, as the charge of manslaughter at the end was qualified by an introductory statement, such introductory statement must show a legal duty on the part of the accused sufficient to maintain the charge, which it did not.*

**R**ULE nisi for a writ of *certiorari* to remove into the High Court a coroner's inquisition and recognisances, for the purpose of quashing the same.

The inquisition was taken before Edward M. Grace, one of the coroners for the county of Gloucester, on the 30th day of December, 1896, and the 4th day of January, 1897, in the

(a) Reported by W. W. ORR, Esq., Barrister-at-Law.

parish of Stapleton, as to the cause of the death of one George Seabourne, and the inquisition stated :

That the jury upon their oaths do say that the said George Seabourne was found dead on the 26th day of December, 1896, at a quarry at Stapleton, in the county of Gloucester, and that the cause of his death was injuries to his head and back, caused by a fall into a quarry, and so do further say that by the neglect of Edward Tuckett Daniell, Thomas Free, and Alfred John Saise, to fence, or caused to be fenced, the said quarry, George Seabourne fell therein, and that therefore the said Edward Tuckett Daniell, Thomas Free, and Alfred John Saise did feloniously kill the said George Seabourne.

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It appeared that Mr. Thomas Free, mentioned in the inquisition, was the chairman or managing director of a stone quarry company, which owned the quarry in question ; and E. T. Daniell and A. J. Saise were respectively the chairman of and the inspector of nuisances for, the Stapleton Urban District Council, within whose district the quarry was situate. A road ran along the edge of the quarry above the place where the deceased was found, and it appeared that the road at this place was not properly fenced and had not been properly fenced for some years.

The inquisition now sought to be quashed was lodged with the Clerk of Assize of the Oxford Circuit ; and a rule for a *certiorari* was obtained at the instance of E. T. Daniell and A. J. Saise, directed to the clerk of assize, to bring up the inquisition to be quashed on the ground that it was bad in law on the face of it, and did not disclose any offence on the part of the persons named therein.

*A. Lyttelton*, for the coroner, showed cause.—This inquisition is perfectly good in law, because it states that the persons named therein “ did feloniously kill and slay ” the deceased. That is a proper and sufficient charge of manslaughter, and the earlier part of the inquisition may be rejected as surplusage. Where an inquisition contains two or more findings, it may be good as to part, and void as to remainder ; (Short and Mellor’s Crown Office Practice, p. 109). Even if the inquisition be bad in form the Court ought not to quash it, as the depositions show the position of the defendants, and that there was a neglect of duty by them which was the direct cause of the deceased’s death. By sect. 3 of the Quarry Fencing Act, 1887 (50 & 51 Vict. c. 19), this quarry, being adjacent to the highway, ought to have been kept reasonably fenced for the prevention of accidents, and not having been so kept it became a public nuisance by virtue of that section. It was the duty of the defendant, Thomas Free, as chairman of the quarry company, to see that the quarry was properly fenced ; and it was the duty of the other defendants in their public capacity to see that this fencing was properly carried out. The inquisition thus shows that there was an omission on the part of these persons to do their duty, and as such omission arose from negligence it is a case of manslaughter : (*Reg. v. Hughes*, 26 L. J. 202, M. C.). In *Reg. v. Pocock* (17 Q. B. 34), the Court held to be bad, and quashed, an

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inquisition which found that trustees appointed for the purpose of repairing certain roads were guilty of the manslaughter of a person who was accidentally killed in consequence of one of the roads being out of repair through the neglect of the trustees. That case was decided on the express ground that there the death was not the immediate result of the personal neglect; which distinguishes the case from the present, where the death was the immediate result of the neglect of the defendants to fence. I submit, on behalf of the coroner, that he merely did what he was bound to do in returning this inquisition.

*Danckwerts*, for the defendants Daniell and Saise, in support of the rule.—*Reg. v. Pocock (ubi sup.)*, where the inquisition was quashed, is still an authority on this point. When that case was decided the Act 14 & 15 Vict. c. 100 (the Criminal Procedure Act, 1851) was then in existence, and sect. 4 of that Act contained a provision similar to that in sect. 6 of the 24 & 25 Vict. c. 100 (the Offences against the Person Act, 1861), which latter section states that it shall be sufficient in any indictment for manslaughter to charge that the defendant "did feloniously kill and slay" the deceased; and in *Reg. v. Ingham* (10 L. T. Rep. 456; 5 B. & S. 257), it was held that this provision applies to a coroner's inquisition. Therefore, if it be now objected that by sect. 6 of the 24 & 25 Vict. c. 100, it is sufficient to charge that the defendant did feloniously kill and slay the deceased, it may be answered that the same objection would have been applicable equally in *Reg. v. Pocock (ubi sup.)*, where it was not allowed to prevail. The test always laid down was, that if the inquisition was bad on demurrer this court would quash it. Now, however, there is power to amend the inquisition, and if the judge thought it could be amended he would have a discretion so to amend under sect. 20 of the Coroners Act, 1887 (50 & 51 Vict. c. 71). The inquisition is clearly bad at common law, and would have been so held, because it does not set out all the facts from which the alleged duty arose. The inquisition is therefore bad on the face of it, and on this point I cite *Reg. v. Pocock (ubi sup.)*. It is for the coroner to show that it is good, because if it be bad no judge would amend in such a case as this under sect. 20, and the only power of amendment is under that section.

*H. Sutton* for the Public Prosecutor.

*Gwynne James* for the defendant Free.

WRIGHT, J.—I think this inquisition must be quashed. If it had been simply found that the three defendants did feloniously kill and slay the deceased person, it would clearly have been enough; but I think it appears to be a general rule of criminal pleading, for which a good deal of support can be found in a number of references collected in Archbold's Pleading and Evidence in Criminal Cases (21st edit.), pp. 62, 229, *et seq.*, that, although a simple statutory form of indictment or inquisition may suffice, still, if the party chooses to make

use of what may be called a special indictment or inquisition, the case is altered; and then it appears that every part of the special indictment or inquisition, which states the material elements of the offence, must state it so as in law to state a sufficient matter to support a conviction. No doubt it is now very seldom material, because in the great majority of cases there is abundant power to amend; but unless that defect is so amended it would seem to be fatal on demurrer, and in a proper case, upon application to quash the inquisition, it would be quashed. Let me test the case in this way: Supposing that at the trial the jury were to find a special verdict following the very terms of this inquisition, it would obviously be entirely bad and it seems to me that that is a very fair test to apply. There is no common law duty to fence a quarry which is not stated to be so situated as to be a public nuisance. There is no statutory duty to fence it unless it is within a certain distance of a highway, and there is no allegation here that the defendants or any of them had any such relation to the quarry as to involve them in a personal liability. Therefore, clearly a special verdict to this effect would have been entirely bad; but I do not say, and I do not think, that that is an absolute test. We clearly have jurisdiction to quash this inquisition, because we are bound by the case of *Reg. v. The Directors of the Great Western Railway Company* (58 L. T. Rep. 765; 20 Q. B. Div. 410; 57 L. J. 136, Q. B.) to hold that the jurisdiction of the Queen's Bench Division in that respect is not in any way fettered by sect. 20 of the Coroners Act, 1887, and that the jurisdiction of this court to quash an inquisition for irregularity on the face of it is left untouched by that section, which only binds courts of assize and so on, and which contemplates an amendment by the court before whom the person charged is brought for trial. But, although we have abundant power to quash, we might refuse to exercise it unless we saw there was some substance in the objection. Here unquestionably as regards two of the defendants there is a most serious defect in the charge against them. I do not think that it can be contended for a moment that members of a district council or other body of that kind, are liable to a charge of manslaughter simply because they have omitted to exercise powers vested in them to cause other people to fence places. If we thought there was no substance in the objection we should probably have left the matter to be dealt with by the judge at the assizes. But, seeing that the case as against two of the defendants is of such a character that it would be a gross injustice to make them appear at the assizes, and make them stand their trial upon the coroner's inquisition, I think we ought to interfere and quash this inquisition upon the grounds I have stated. The reasons I have stated apply equally to Mr. Free as regards the power to quash, but the case of Mr. Free may appear a different one in substance, though I do not say it is. He is said to be chairman of the quarry

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company and it may be there is a case against him. We cannot say there is no case against him; and, therefore, what we have said ought not to prejudice the right of the Public Prosecutor, if he thinks fit, to carry the case further against him, but merely that he stands on a different footing to the others. It follows that the recognisances must be quashed without reference to what the form of them is.

BRUCE, J.—I am of the same opinion. It is quite true that the inquisition contains words which, if they stood alone, would have been a good inquisition; but these words cannot be separated from the introductory part of the inquisition, or from the statement which is coupled with the important words of the inquisition by the word “therefore.” The inquisition professes to show the particulars under which the duty arose; and it says because that duty was not performed, therefore there was a felonious act, but the inquisition altogether neglects to set out in the early part of it any facts which impose a duty. The inquisition is as if it stood thus: “The deceased fell into a quarry and was found dead, and therefore the persons named in the inquisition did feloniously kill and slay the deceased.” Where the inquisition condescends to particulars, and when those particulars are insufficient to set out any legal duty or culpable negligence, I think we must quash it as bad on the face of it. With reference to the case against the manager of the quarry, I have only to add that I understand it to be a general rule of law that a person is not to be held criminally responsible for the neglect of a subordinate; and, if he could establish that, though there was neglect to fence the quarry, it was not his neglect, but the neglect of a subordinate person, he has power to do so.

*Rule absolute.*

Solicitors for the Coroner, *Bridges, Sawtell and Co.*, for *Thurstons and Jolly*, Thornbury.

Solicitors for the defendants *Daniell and Saise, Rowcliffes, Rawle, and Co.*, for *Benson, Carpenter, and Co.*, Bristol.

Solicitors for the defendant *Free, Rowcliffes, Rawle, and Co.*, for *Salisbury and Griffiths*, Bristol.

Solicitor for the Public Prosecutor, *The Solicitor to the Treasury*.

## QUEEN'S BENCH DIVISION.

*Saturday, March 13.*

(Before CAVE and GRANTHAM, JJ.)

GOLDSTEIN (app.) v. VAUGHAN (resp.). (a)

*Factories — Workshop open on Sunday — Persons of Jewish religion — “Open for traffic on Sunday” — Factory and Workshop Act, 1878 (41 & 42 Vict. c. 16), s. 51.*

*Sect. 51 of the Factory and Workshop Act, 1878, enables a person of the Jewish religion to employ, on certain conditions, young persons or women of the Jewish religion in his workshop or factory on Sunday, provided that the workshop or factory shall not be “open for traffic on Sunday.”*

*The appellant, whose business was to make button-holes for tailors, made arrangements with his customers to make button-holes on their garments for certain prices; and the garments were sent to his workshop and fetched away when the work was done. Persons of the Jewish religion were employed in the workshop on Sunday, and the workshop was open on Sunday in order that customers might send or fetch away garments in pursuance of arrangements previously made, but it was not open for the making of arrangements with old or new customers, or for the receipt of work from casual customers, or for the payment or settlement of accounts.*

*Held, that the workshop was not “open for traffic on Sunday” within the meaning of sect. 51.*

**C**ASE stated by a metropolitan police magistrate sitting at the Thames police-court.

An information was taken out against the appellant by the respondent, who was an inspector of factories and workshops. This information charged that on the 20th day of September, 1896, at a certain workshop within the meaning of the Factory Acts, of which workshop the appellant was the occupier, a woman was employed contrary to the provisions of the Factory Acts, in that the aforesaid workshop was open for traffic on that day, being Sunday.

This information was heard and determined by the magistrate, who convicted the appellant, and fined him one shilling and four shillings costs.

The facts proved or admitted were these :

The appellant was a button-hole machinist, his business being

(a) Reported by W. W. ORR, Esq., Barrister-at-Law.



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*religion—*

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*Sunday”—*

41 & 42 Vict.  
c. 16, s. 51.

to make button-holes for master tailors. He was of the Jewish religion, and having his workshop closed on Saturdays had availed himself of an exception under Part II. of the Factory and Workshop Act, 1878, s. 51, which entitled him, if he thought proper, to employ women and young persons on Sundays, subject however, to the condition (*inter alia*) that his workshop should not be open for traffic on Sunday.

The appellant's mode of doing business was as follows: He entered into arrangements with his customers under which he was to make button-holes on their garments at certain prices. They sent the garments to the workshop and fetched them away when the work was done. The button-holes were not paid at the time the work was left, or when it was fetched away, but accounts were kept and settlements were made at times quite independent of these visits. The workshop was open on Sunday in order that such customers might send or fetch garments in pursuance of such prior arrangements; but the workshop was not kept open on Sunday for the purpose of making an arrangement either with an old or a new customer, or for the receipt of work from a casual customer, or for the payment for work already done, or for the settlement of any accounts with respect to work done or to be done.

The appellant employed on the 20th day of September, 1896, in the workshop a woman of the Jewish religion, as charged in the summons.

The magistrate was of opinion that the facts stated brought the appellant's workshop within the words “open for traffic on Sunday,” and he convicted the appellant accordingly.

The question for the opinion of the Court was whether the facts above-stated brought the appellant's workshop within the words “open for traffic on Sunday.”

Sect. 51 of the Factory and Workshop Act, 1878 (41 & 42 Vict. c. 16) provides that

No penalty shall be incurred by any person in respect of any work done on Sunday in a factory or workshop by a young person or woman of the Jewish religion, subject to the following conditions: (1) The occupier of the factory or workshop shall be of the Jewish religion; and (2) the factory or workshop shall be closed on Saturday and shall not be open for traffic on Sunday; and (3) the occupier shall not avail himself of the exception authorising the employment of young persons and women on Saturday evening, or for an additional hour during any other day of the week; &c.

*Channell, Q.C. (Israel Davis with him) for the appellant.*—Sects. 50 and 51 of the Factory and Workshop Act, 1878, are sections which relate to what may be done by Jews on Sunday. Sect. 50 apparently deals with persons of the Jewish religion employing Christians, and sect. 51 deals with cases where both the employer and the employed are of the Jewish religion, and the provisions of this section date from 1871, as there is a similar enactment in sect. 1 of the Workshop, &c., Amendment Act, 1871 (34 & 35 Vict. c. 19). The whole question here is as to the meaning of the words “open for traffic” on Sunday,

and whether or not the shop was under the circumstances "open for traffic." As to the meaning of the word "traffic," the word is used in the Railway and Canal Traffic Acts, and there are cases as to what is "traffic" within those Acts, but they do not throw light on this question. The ordinary dictionary meaning of the word is "trade;" that is the first and primary meaning. The second meaning in most dictionaries is "commodities," the subject of traffic, the thing trafficked in. Modern dictionaries gave a third meaning, as traffic done upon railways, &c., and the traffic in the streets. It is submitted that meaning is not in any way applicable to this case, and in no sense would a workshop or factory be open for traffic having reference to that meaning. Then there is a further meaning given, the passing of goods and commodities and persons backwards and forwards collectively; but that clearly cannot be the meaning of the word in this Workshop Regulation Act, because no warehouse would be open for traffic in that sense. "Open for traffic" means open for trade, for people to come to and fro. Here no trade at all was done; it was carriage that was done, and the matter is just the same as if one person carried on the two businesses of making the coats and making the button-holes in another part of the premises; and the carrying backwards and forwards of the garments when they were made in one part of the premises to the part of the premises where they would have the button-holes put in, is not "traffic" within this section. So what was done here was merely the carrying backwards and forwards of the articles upon which the work was to be done; but if the shop had been open for anyone on that day to come in and make a bargain as to the doing of work and the prices, then that would have been trafficking. The section means that you may carry on a factory, but you must not have a regular shop; you must not have dealing with outside people, and you must not have general trafficking or general business dealings with outside people. People who were admitted to this shop were admitted only because they had existing arrangements or bargains under which their work was being done, and only those who were bringing or taking away goods under prior arrangements were admitted. That being so, the case is neither within the mischief aimed at by the Act, nor within the meaning of the word "traffic."

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*H. Sutton* for the respondent.—Sect. 21 of the Act, which says that "a child, young person, or woman shall not . . . be employed on Sunday in a factory or workshop," is important. That section shows that the appellant would have been guilty of a breach of that section, but for sect. 51. I submit that the meaning of sect. 51 is that the words "shall not be open for traffic" mean that the premises are not open for traffic only when all business with persons outside is cut off, and when all business intercourse with persons outside is stopped, though work may be carried on inside the factory itself. The section means that you

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must not have the premises open to the outside world for any business purpose whatsoever, which would clearly include the present case. The magistrate was therefore right in his decision.

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CAVE, J.—It is not altogether easy to construe the words “open for traffic,” as there is a natural difficulty attending the use of the word “traffic,” which makes it a little difficult to put a real meaning upon the section; but I think the view which the learned magistrate took in this case is rather too narrow. It is quite obvious that if the things had been done which he finds were not done in this factory, the factory would have been “open for traffic.” If, for instance, people could have come in and out, and given orders just as they did on other days; made their arrangements for having these button-holes made; inquired the prices, got a reduction on sending a quantity and things of that sort, then there would have been no doubt that the place would have been “open for traffic.” I have, however, a little difficulty in seeing how that would be so, where all that is done is that the things are brought by a person with whom an arrangement has been previously made, and that because they are brought there in pursuance of a business arrangement made on another day, therefore the workshop is open for traffic on a Sunday. The Legislature has not been very clear upon the matter; but, putting the best interpretation I can upon the words, I should say that a workshop is not “open for traffic” if nothing more took place than what the learned magistrate decided took place in this case. I think, therefore, this conviction must be quashed.

GRANTHAM, J.—I am of the same opinion. I think the learned magistrate has taken too narrow a view of the meaning of the words in this Act. It is evident that what the Legislature intended to do was practically to put the Jew in the position of a Christian, and to change the word “Saturday” for “Sunday,” and “Sunday” for “Saturday,” with regard to young persons of the Jewish religion; but they wanted to prevent the Jew from taking advantage of that provision and from being able to do, what he otherwise would be able to do if the words were transposed, namely, to carry on his trade generally on the Sunday. Therefore, the Legislature said, “We will allow you to employ these young persons on the Sunday so long as your workshop is not carried on on the Saturday, and we will allow you to carry on your trade in the workshop on Sunday as long as it is not “open for traffic.” Here it is found that an arrangement was made beforehand for the work to be sent in and done. That being so, in my opinion, there was no trafficking on Sunday, and the learned magistrate was wrong.

*Appeal allowed. Conviction quashed with costs.*

Solicitor for the appellant, *T. W. Moore.*

Solicitor for the respondent, *The Solicitor to the Treasury.*

## QUEEN'S BENCH DIVISION.

Monday, March 15, 1897.

(Before CAVE and LAWRENCE, JJ.)

DUNCAN v. DOWDING AND OTHERS. (a).

*Licensing Act, 1874 (37 & 38 Vict. c. 49), s. 16—Power of constable to enter on licensed premises—Supposed violation of Act—Reasonable grounds—Sounds of music and singing.*

*By sect. 16 of the Licensing Act, 1874, a constable is empowered at all times to enter any licensed premises "for the purpose of preventing or detecting the violation" of any of the provisions of the Act which it is his duty to enforce, and any person who refuses or fails to admit any constable demanding to enter in pursuance of this section is made liable to a penalty.*

*A police constable, hearing the sound of music and singing proceeding from a private room in a licensed house, entered the house and demanded admission to the private room. The appellant failed to admit the constable to the room.*

*Held, that a constable is not empowered under this section to enter on licensed premises unless there is some evidence from which he may reasonably suppose that a breach of the law is being committed, and the mere sound of music coming from a private room is not such evidence. The appellant, therefore, was not obliged to admit the constable.*

CASE stated by the Recorder of Bristol.

The appellant, who is the keeper of a fully licensed house known by the sign of the Brandy Cask, in Bond-street, Bristol, was convicted before the justices of Bristol, of an alleged offence under sect. 16 of the Licensing Act, 1874, by refusing or failing to admit a constable demanding to enter, and, on appeal to the quarter sessions for the city and county of Bristol, the recorder affirmed the conviction subject to this case. The facts disclosed were as follows :

On the 23rd day of April, 1896, at 10.30 p.m., the respondent Dowding, a police sergeant, while on duty in Bond-street, heard music and singing coming from the licensed premises. He thereupon entered upon the licensed premises, passed through the bar, and proceeded upstairs to a room from which the singing and playing came. The said room was part of the licensed premises, and was then in the

(a) Reported by G. H. GRANT, Esq., Barrister-at-Law.

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suspecting  
violation of  
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s. 16.*

occupation of a society known as The Royal Antediluvian Order of Buffaloes, who were then conducting their business within the room, which had been let to the Clarence and Colston Lodge of the said society under an agreement for the exclusive occupation of the society on every Thursday evening. While such business was being transacted, intoxicating liquors were supplied by the appellant to members, but no person was permitted to enter the room except members of the society, and they only upon the giving and receiving of a password and sign. The appellant himself was a member of the society, and, at the time in question, was engaged within the room upon the business of the same. The respondent knocked at the door of the room, but was refused admission. The respondent thereupon sent for the appellant to come downstairs, and the appellant shortly afterwards came out of the room, the door being closed behind him. Upon the respondent demanding admission the appellant replied that he could not admit the respondent, as the room was occupied by a secret society, and he (the appellant) had nothing to do with it. The appellant made no effort to let the respondent in. Upon these facts the learned recorder held that an offence had been committed by the licensee of the premises against sect. 16 of the Licensing Act, 1874 (37 & 38 Vict. c. 49). That section provides as follows:

Any constable may, for the purpose of preventing or detecting the violation of any of the provisions of the principal Act or this Act which it is his duty to enforce, at all times enter on any licensed premises. . . . Every person who by himself or by any person in his employ or acting by his direction or with his consent, refuses or fails to admit any constable in the execution of his duty demanding to enter in pursuance of this section shall be liable to a penalty.

The licensee appealed.

*Candy, Q.C. (Lionel Maddison with him) for the appellant.*—The unconditional power to a constable to enter licensed premises given by sect. 35 of the Licensing Act of 1872 was advisedly abolished by the repeal of that section, and in its stead sect. 16 of the Act of 1874 has been substituted. That section only gives a conditional power of entry, viz., for the purpose of preventing or detecting the violation of the law. The constable cannot enter at his mere will and pleasure, but there must be some reasonable ground for apprehending a violation of the law. Here there was no such ground. At any rate, having gained admission to the licensed premises, the landlord cannot be held responsible for the refusal of the society to admit the constable to their private room over which the landlord had no control.

*Vachell for the respondent.*—If the constable *bonâ fide* believes that the law is being, or is about to be violated, that is sufficient. The finding of the Recorder in paragraph 7 of the case is a finding of fact to that effect, and the Court will not interfere with it: *Reg v. Dobbin* (48 J. P. 182). As to the second point raised by the appellant, he cited *Reg. v. Tolt* (30 L. J. 177, M.C.)

*Candy, Q.C. in reply.*



CAVE, J.—This case raises a question which, it appears to me, it is unnecessary at present to decide, although I should myself hesitate before deciding as the learned recorder seems to have done, that this section empowers a constable to enter a private room in a licensed house at all times and in all cases. I am certainly not prepared to go so far as that. The 16th section gives power of entry to a constable for certain purposes, and there ought to be some evidence leading him to the conclusion that the state of things which he is empowered to prevent did or was about to exist. If, for example, it had been proved that, during the four years during which this society had occupied this room, members had left the house drunk on previous occasions. That, however, would have raised the further question whether, when the supposed violation of the law is in a private room, the licensee can be convicted on account of the refusal of the tenant of the room to admit the constable. I should require to hear further argument upon that point. But, without prejudice to that question, it is sufficient in the present case to say that there was no evidence here on which the constable could reasonably conclude that an offence against the Licensing Acts was being committed. His only reason was that he heard music and singing, which constantly takes place on licensed premises in private rooms. It is a matter of everyday occurrence that, when a man is staying at a hotel, perhaps with his wife and daughter, they should beguile the time with music and singing. Can it be supposed that a constable, if he hears such music, can demand admission to the private room, and, being there, of course, stay there? Again, it is a strong thing to say that a licensed holder of premises can be convicted for not admitting a constable to a room over which he has no control. But it is not necessary to consider that. The learned recorder has held that a constable has only to say that he wants to enter a room and that is enough. In my opinion it is not enough. I am not prepared to hold that a police constable is at liberty to go all over a licensed house at his pleasure. That is a delicate mission which I cannot suppose is entrusted to him without his giving some reason for exercising it. It seems to me there must be some supposed breach of the law which the constable was going to prevent. Now, all that the recorder finds is that the constable visited the licensed premises and demanded to enter the room for the purpose of preventing and detecting the violation (if any) of the provisions of the Licensing Acts. I think in this case there was no ground for supposing that there had been any violation of the Licensing Act, and therefore the constable had no right to demand admission. This decision, however, is not to be taken as giving colour to the notion that people in private rooms in licensed houses are at liberty to drink to excess.

LAWRANCE, J. concurred.

Solicitors for the appellant, *James Morley and S. A. Bailey.*

Solicitor for the respondent, *D. Trowers Burgess.*

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## NORTHERN CIRCUIT.

## LIVERPOOL SUMMER ASSIZES.

*Thursday, Aug. 6, 1896.*

(Before CAVE, J.)

REG. v. ELIZABETH ROBERTS. (a)

*Practice—Evidence—Competence of prisoner's husband to give evidence—Prevention of Cruelty to Children Act, 1894.**The offence of feloniously causing grievous bodily harm, where the person alleged to have been injured is a child under sixteen, is not an "offence involving bodily injury to a child under sixteen" within the meaning of the concluding paragraph of the schedule to the Prevention of Cruelty to Children Act, 1894, and in such a case the prisoner and his or her wife or husband are not competent witnesses.*

ELIZABETH ROBERTS was indicted upon the charge of feloniously causing grievous bodily harm to John Roberts, with intent to do him grievous bodily harm; and with a second count for feloniously wounding John Roberts, with intent to do him grievous bodily harm (24 & 25 Vict. c. 100, s. 18). It appeared in evidence that John Roberts was a child under sixteen.

The Prevention of Cruelty to Children Act, 1894 (57 & 58 Vict. c. 41) s. 12 provides that

In any proceeding against any person for an offence under this Act, or for any of the offences mentioned in the schedule to this Act, such person shall be competent but not compellable to give evidence, and the wife or husband of any such person may be required to attend to give evidence as an ordinary witness in the case, and shall be competent but not compellable to give evidence.

The schedule to the Act, after specifying certain offences, concludes, "any other offence involving bodily injury to a child under the age of sixteen years."

*T. Swift*, for the Crown, proposed to call the prisoner's husband as a witness, on the ground that the offences charged in the indictment came within the concluding clause of the schedule.

CAVE, J.—The husband is not a competent witness. The "other offences" contemplated by the concluding clause of the schedule are offences of which it is an essential part that the person injured is a child under sixteen. Upon a charge of murdering a child under sixteen the prisoner and his or her spouse would not be competent witnesses.

Solicitor for the prosecution, *The Town Clerk of Liverpool*.

(a) Reported by Sir H. STEPHEN, Bart., Barrister-at-Law.

## SOUTH-EASTERN CIRCUIT.

LEWES SUMMER ASSIZES.

*Wednesday, June 30, 1897.*

(Before MATHEW, J.)

REG. v. SHIPLEY PARISH COUNCIL. (a)

*Highway—Indictment for non-repair—Local Government Act, 1894 56 & 57 Vict. c. 73)—Liability of parish council—Costs—Highway Act, 1835 (5 & 6 Will. 4, c. 50), ss. 94, 95.*

*Notwithstanding the provisions of sect. 6 of the Local Government Act, 1894, and the definition of “vestry,” contained in sect. 75 (2) of that Act a parish council is not liable to be indicted for the non-repair of highways.*

*Quære, whether the inhabitants of a parish still remain liable to be indicted for the non-repair of the highways within such parish, or whether the common law liability of the inhabitants to indictment for non-repair has been extinguished altogether by the Local Government Act, 1894.*

*Sects. 94 and 95 of the Highway Act, 1835, conferred upon justices the power in certain events to order an indictment for non-repair of a highway to be preferred “against the inhabitants of the parish or the party to be named in such order,” and the costs of a prosecution instituted under those sections are, by sect. 95 payable in any event “out of the rate made and levied in pursuance of this act in the parish in which such highway shall be situate.”*

*Held, that the provision with regard to costs does not apply where the highway in question is under the control of a district council.*

*Quære, whether, since the passing of the Local Government Act, 1894, the justices have any jurisdiction to order an indictment for non-repair of a highway.*

**T**HIS was an indictment preferred against the Shipley Parish Council for non-repair of that part of a highway called Hookland-lane, which was situate within the parish of Shipley.

The indictment had been preferred pursuant to an order of justices purporting to have been made in pursuance of sect. 95 of the Highway Act, 1835, and the Acts amending the same.

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At the trial two defences were raised on behalf of the Shipley Parish Council:—

1. That the road in question was not a highway at the date when the Highway Act, 1835, came into operation; and therefore as none of the formalities specified in sect. 23 of that Act had been observed, it had never become a highway which the parish was liable to maintain.

2. That even if the road was a highway which the parish was liable to maintain, an indictment for non-repair would not lie against a parish council.

Upon the first point the jury returned a special verdict in favour of the prosecution to the effect that the road had been completely dedicated to the public prior to the date when the Highway Act, 1835, came into operation.

His Lordship thereupon called upon counsel for the prosecution to show how the liability to indictment for non-repair had come to be cast upon the parish council instead of upon "the inhabitants," as formerly.

*H. F. Dickens*, Q.C. (with him *G. F. Hohler* and *C. J. B. Hurst*) for the prosecution contended that the effect of sect. 6 of the Local Government Act, 1894, coupled with the definition of "vestry," contained in sect 75 was to transfer the liability to indictment from the inhabitants of the parish to the parish council. Sect. 6 transfers to the parish council "the powers, duties and liabilities of the vestry," and by the definition clause the term "vestry" included "the inhabitants of the parish whether in vestry assembled or not." Sect. 100, of the Local Government Act, 1888, defined "liabilities," as including "the liability to any proceeding for enforcing any duty, or for punishing the breach of any duty." This definition, which is incorporated by sect. 75 (1) of the Act of 1894, would include the liability to indictment for non-repair of highways, and the liability to indictment for non-repair was a liability of the inhabitants. Therefore, since the passing of the Local Government Act, 1894, the parish council had been and were the proper parties to indict. The object of the Legislature was to do away with the inconvenience of indicting the inhabitants by substituting for the inhabitants a corporate body, which should represent them and be indictable instead of them. By sect. 25 the district council were made surveyors of highways, and given the control of the highways within their district; but surveyors of highways were not liable to be indicted for non-repair (*Reg. v. Mayor of Poole*, 19 Q. B. Div. 672); and therefore it would not be right to indict the district council. It was, however, the duty of the parish council to see that the district council performed its obligations with regard to the highways under its control, and sect. 16 (1) gave the parish council the power to compel the district council to do the necessary repairs.

*E. Marshall Hall* and *R. E. Moore*, for the defendants, contended that the Act did not impose upon the parish council

the liability to indictment for non-repair. An indictment for non-repair would not lie unless there was a corresponding obligation to repair; but the parish council had neither the power to repair nor the means of repairing, and is in effect prohibited from repairing by the Local Government Act, 1894. A parish council could only spend money in exercise of the powers expressly conferred upon them by the Act, and the power to repair was not one of them. By sect. 11 the amount which a parish council was entitled to expend in the course of a year was strictly limited to an amount which would render it impossible for them to find money for the repair of highways, and the effect of other sections was to render them liable to be surcharged by the auditor if they spent money on such repairs. Sect. 13 (2) expressly empowered a parish council "subject to the provisions of the Act with respect to restrictions on expenditure" to undertake the repair of "footpaths." Therefore by virtue of the maxim *Expressio unius exclusio alterius* they were prohibited from undertaking the heavier burden of repairing highways. Sect. 25 expressly imposed upon the district council the duty of repairing, and that body alone had control of the necessary funds. By sect. 29 the district council was expressly saddled with the payment of highway expenses, and the effect of that section, combined with sects. 229 and 230 of the Public Health Act, 1875, was to abolish highway rates, and to make highway expenses payable out of the general district funds, thus relieving the parish from the burden of such expenses, and making it impossible for the parish council to incur them. In certain exceptional cases (*e.g.*, in districts where there was no highway board at the commencement of the Act) a parish still remained liable to maintain its own highways, but even in those cases it was provided by sect. 82 (2) that highway expenses "shall not be deemed to be expenses of the parish council or parish meeting," and it would therefore be a breach of duty on the part of a parish council to expend a penny on the repair of highways. If the parish council were convicted they would be liable to a fine, and this fine would have to be levied on the property of the parish council, and, although it was admitted that the district council was the proper party to effect the repairs, and the necessary funds were solely under the control of that body, there were no means by which the parish council could compel the district council to refund the amount of the fine, as sect. 96 of the Highway Act, 1835, no longer applied since highway rates had been abolished. If the construction sought to be put upon sect. 6 by the prosecution was correct a similar construction must be placed on sect. 19 (6), with the result that the liability to indictment in cases where there was no parish council was transferred to a "parish meeting." But a "parish meeting" was not a corporate body, and it was impossible to indict an unincorporated body. Sect. 6 (1) was permissive only, and did not impose upon a parish

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council any duty with regard to the non-repair of highways. The liability to indictment for non-repair was a liability of the inhabitants at large, and not of the vestry, or of any assembly analogous to a vestry, and when the Legislature by sect. 6 transferred to the parish council the powers, duties, and liabilities of the inhabitants, "whether in vestry assembled or not," it did not mean to include the liabilities of the inhabitants at large, but meant to transfer only the powers, duties, and liabilities of the inhabitants when assembled either in vestry or in some assembly analogous to and having similar powers to a vestry, *e.g.*, a meeting of inhabitants held under the Highway Act, 1835, in places where there was no vestry: (see the definition of "inhabitants in vestry assembled" in sect. 5 of the Highway Act, 1835). Either the liability to indictment for non-repair was still upon the inhabitants or it had been extinguished altogether. If the Act transferred the liability to repair from the inhabitants, the same Act prohibited the parish council from undertaking the burden of repairing, and therefore the common law liability was extinguished altogether. The appropriate remedy at the present day when a highway is out of repair is that provided by sect. 10 of the Highways and Locomotives (Amendment) Act, 1878.

MATHEW, J., in giving judgment, said that he had come to the conclusion that an indictment for non-repair would not lie against the parish council. By sect. 6 of the Local Government Act, 1894, as read by the light of the definition clause, the liabilities and duties of the inhabitants of a parish were transferred to the parish council, and it was said that the word "liability" included the liability of the inhabitants to indictment for non-repair of highways. However, on turning to the Act itself he had come to the conclusion that the parish council had neither the power nor the means of repairing. The Act did not impose upon them the duty of repairing, and they could not therefore be indicted for non-repair. By sect. 25 the duty of repairing was imposed upon the district council, and that body alone had control of the necessary funds. He said nothing as to whether this liability was still upon the inhabitants. All he decided was that the liability was not upon the parish council. He therefore directed a verdict of "Not Guilty."

*Dickens*, Q.C., on behalf of the prosecutor, then applied for an order for payment of his costs out of the rates on the ground that the indictment had been preferred pursuant to an order of justices made under sect. 95 of the Highway Act, 1835, and that in such a case the section in question entitled the prosecutor in any event to an order that his costs should be paid "out of the rate made and levied in pursuance of this Act in the parish in which such highway shall be situate."

MATHEW, J., in refusing to make the order, held that the provision with regard to costs contained in sect. 95 did not apply to the present case, as there was no longer any power to levy

such a rate as was contemplated by the section, and there was therefore no fund out of which he could order the costs to be paid.

*Verdict, Not Guilty. No order as to costs.*

Solicitors for the prosecution, *Mant and Mant*, Petworth.

Solicitors for the defence, *A. C. Coole*, Horsham.

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## MIDLAND CIRCUIT, DERBY.

*Wednesday, July 14, 1897.*

(Before POLLOCK, B.)

REG. v. WILLIAM BEIGHTON. (a)

*Practice—Criminal Law Amendment Act, 1885—Evidence of prior acts to rebut denial on oath by defendant—Limit of time.*

*Where the prosecution is bound by statute to be commenced within three months of the offence charged evidence of similar prior offences by the prisoner is not admissible either in chief or to rebut the prisoner's denial of those prior offences on cross-examination.*

**W**ILLIAM BEIGHTON was indicted under sect. 5, subsect. 1, of the Criminal Law Amendment Act, 1885, for unlawfully and carnally knowing Sarah Ellen May Greatorex, a girl under the age of sixteen years, to wit, of the age of fifteen years, at Derby, on the 13th day of April, 1897.

*Cracroft* prosecuted.

*Hextall* was for the defence.

The prosecutrix gave evidence in support of the indictment, and other witnesses were called in corroboration.

The prosecution had been commenced by an information laid on the 7th day of May.

For the defence, the defendant gave evidence on his own behalf under sect. 20 of the above Act, and, in answer to questions put in cross-examination, denied having had sexual intercourse with the prosecutrix on various dates between November, 1896, and the date charged in the indictment.

(a) Reported by R. W. CRACROFT, Esq., Barrister-at-Law.



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defendant.*

When the case was before the magistrates, objection had been taken on behalf of the defendant to evidence in chief being given by the prosecutrix of the last-mentioned acts, as being committed more than three months before the commencement of the prosecution, but the justices admitted such evidence subject to a marginal note upon the depositions of the objection, and of their decision against it. At the trial no attempt was made to give evidence of the said acts in chief, and it was not contended that it had become admissible by reason of any cross-examination of the witnesses by the defendants' counsel.

At the close of the evidence for the defence, *Cracroft* submitted that he was entitled to recall the prosecutrix to give evidence of the said prior acts, which, though not originally admissible because committed more than three months before the prosecution was commenced, had now been made relevant by the specific denials of them by the defendant when sworn as a witness in his own behalf. He argued that the case was analogous to the ordinary rule in cases of rape, namely, that cross-examination of the prosecutrix as to intimacy with other persons than the prisoner is solely to credit, and cannot be contradicted, while cross-examination as to intimacy with the prisoner himself goes to matters relevant to the issue, and can be contradicted upon oath.

*Heatall, contra.*

POLLOCK, B.—The evidence of the prosecutrix as to acts going back beyond the statutory limit of three months cannot be admitted. The prosecution upon this point must stand or fall by the proviso as to three months at the end of sect. 5, subsect. 1, as the offence is necessarily laid under that section, and the limit of time does not the less apply because the defendant has denied the acts in answering questions put to him in cross-examination.

The jury found for the defendant.

*Not guilty.*

Solicitor for prosecution, *Bendle W. Moore*, Derby.

Solicitors for the defence, *Briggs, Clifford*, and *Pinder*, Derby.

## COURT OF APPEAL.

*Thursday, March 18, 1896.*

(Before Lord ESHER, M.R., LOPES and CHITTY, L.JJ.)

THE MAYOR, ALDERMEN, AND BURGESSES OF SOUTHPORT *v.* THE  
BIRKDALE URBAN DISTRICT COUNCIL. (a)

APPEAL FROM THE QUEEN'S BENCH DIVISION.

*Practice — Appeal — Court of Appeal — Jurisdiction — “Criminal cause or matter” — Supreme Court of Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 47.**By a local Act it was provided that, “if it shall at any time be proved to the satisfaction of any two justices, after hearing the parties, that the illuminating power of the gas supplied by the corporation in the said township did not, when so tested as aforesaid, equal the illuminating power by this Act prescribed,” the corporation shall forfeit such sum not exceeding 20l. as such justices shall determine, to be paid to the local board.**Upon an information and complaint by the local board under the above provisions, the justices convicted the corporation and imposed a penalty of 10l., and stated a case for the opinion of the High Court.**Held, that the judgment of the High Court upon the case was a judgment in a “criminal cause or matter,” within the meaning of sect. 47 of the Judicature Act, 1873, from which no appeal would lie to the Court of Appeal.***T**HIS was an appeal by the Birkdale Urban District Council against the judgment of the Divisional Court (Wills and Wright, JJ.) upon a case stated by justices.

The case, so far as is material to this report, was as follows:—

Case stated by five of Her Majesty's justices of the peace of the county of Lancaster sitting as a Court of Summary Jurisdiction at the police-court, Birkdale, in the Southport Petty Sessional Division of the said county, by adjournment on the 25th day of June, 1896:

This was an information preferred by the Birkdale Urban District Council against the Mayor, aldermen, and burgesses of the borough of Southport, in the said county of Lancaster, for an offence in respect of which the following information had been duly laid under the Southport Improvement Act, 1872.

For that the said mayor, aldermen, and burgesses having the right of supply of gas in the said urban district of Birkdale, and furnishing such supply of gas in the said urban district on the 10th day of February, 1896, unlawfully did not supply such gas

(a) Reported by J. H. WILLIAMS, Esq., Barrister-at-Law.

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in the said urban district when tested at a meter and other apparatus of and provided by the said urban district council in the said urban district on the 10th day of February, 1896, of the illuminating power as to produce from an Argand burner having fifteen holes and a seven-inch chimney, being the approved burner and chimney agreed upon in the statute in that behalf for then testing in the said urban district, consuming five cubic feet of gas per hour, a light equal in intensity to the light produced by twenty sperm candles of six in the pound, burning 120 grains per hour, contrary to the Southport Improvement Act, 1871, and the Acts incorporated therewith.

After hearing the parties and the evidence adduced by them, we, the said justices, thereupon convicted the said mayor, aldermen, and burgesses (hereinafter called the appellants) on the said information, and imposed a penalty of 10*l.*, and ascertained and ordered the costs to be paid as prescribed by sect. 41 of the said Act. And the appellants, alleging that they were aggrieved at the said conviction as being erroneous in point of law, did within seven clear days thereafter apply to us to state and sign a case setting forth the facts and the grounds of such determination for the opinion thereon of the Queen's Bench Division of the High Court.

The appellants, by their town clerk and borough treasurer, on the 3rd day of July, 1896, attended at a court of summary jurisdiction, sitting at the police court, in Southport, for the borough of Southport, and entered into a recognisance on behalf of the said appellants, before two justices, the one a justice both for the borough and for the county of Lancaster, the other a justice for the borough but not for the county, to prosecute the said appeal, and subsequently, to wit, on the 16th day of July, 1896, the said town clerk and borough treasurer attended at the court of summary jurisdiction sitting at Birkdale aforesaid in and for the petty sessional division of Southport, where the said appellants were convicted, and entered into a similar recognisance to prosecute the said appeal.

Wherefore we the said justices, in compliance with the said request and in pursuance of the statute in such case made and provided, do hereby state and sign the following case for the opinion of the said Court.

The facts were then stated, and the case proceeded as follows :—

We therefore adjudged and determined the appellants guilty of the said offence with which they were charged in the said information.

The solicitor for the appellants applied to us to place an interpretation on the term "approved" in the said sect. 35, but we did not do so.

The question for the opinion of the Court is whether or not we were right in holding that upon the facts above stated the appellants were bound to supply gas when tested by the testing meter supplied by the respondents, and with the prescribed Argand 15-hole burner provided by the illuminating power prescribed by sect. 35.

If the Court should be of opinion that they were so bound, then our decision is to be affirmed; but if the Court should be of opinion that they were not so bound, then our decision is to be reversed.

The Southport Improvement Act, 1871 (34 & 35 Vict. c. cxi.) provides :

Sect. 40. If the local board shall provide within the township a testing meter or meters and other apparatus for testing the illuminating power of the gas within the township, they may, by an order or orders in writing, from time to time appoint some competent person, not being one of their officers or servants, to make experiment of the illuminating power of the gas by means of such testing meter and other apparatus but, three hours, previous notice in writing shall be given to the corporation of such intended experiment, and the manager of the gasworks or some other duly authorised officer of the corporation shall have access to the place of testing, and if it shall at any time be proved to the satisfaction of any two justices after hearing the parties that the illuminating power of the gas supplied by the corporation in the said township did not, when so tested as aforesaid, equal the illuminating power by this Act prescribed, the corporation shall forfeit such sum not exceeding twenty pounds as such justices shall determine, to be paid to the local board.

Sect. 41. The costs in either of the cases aforesaid of and attending such experiment including the remuneration to be paid to the person making the same and the costs of the proceedings before the justices, shall be ascertained by such justices, and in the event of any penalty being imposed on the corporation, shall be paid, together with

such penalty, by the corporation, but in the event of no penalty being imposed the costs shall be in the discretion of the justices.

Upon the argument of the case, the Divisional Court (Wills and Wright, JJ.) reversed the decision of the justices and quashed the conviction.

The Birkdale Urban District Council appealed.

The Supreme Court of Judicature Act, 1873 (36 & 37 Vict. c. 66) provides :

Sect. 47. . . . No appeal shall lie from any judgment of the said High Court in any criminal cause or matter, save from some error of law apparent upon the record, as to which no question shall have been reserved for the consideration of the said judges under the said Act of the eleventh and twelfth years of Her Majesty's reign.

*Moulton*, Q.C., *Brymnor Jones*, Q.C., and *S. T. Evans*, for the respondents.—There is a preliminary objection to the hearing of this appeal. This is an appeal from a judgment of the High Court in a "criminal cause or matter," within the meaning of sect. 47 of the Judicature Act, 1873, and, therefore, the appeal will not lie. These proceedings were commenced by information and summons, and were in respect of an offence for not supplying gas of sufficient illuminating power contrary to the provisions of sect. 40 of the Southport Improvement Act, 1871. There was a conviction, and the imposition of a penalty of 10*l*. The proceedings, were, therefore, clearly of a criminal character, and might have resulted in imprisonment for nonpayment of the penalty, if taken against an individual: (*Seaman v. Burley*, 18 Cox C. C. 403; 75 L. T. Rep. 91; (1896) 2 Q. B. 344.) Though the proceedings are against a corporation, and consequently cannot result in imprisonment, yet they are criminal proceedings if they might result in imprisonment in the case of an individual: (*Reg. v. Tyler*, 60 L. T. Rep. 662; (1891) 2 Q. B. 588.) It is clear upon the authorities that proceedings such as those which are authorised by sect. 40 of this local Act are a criminal cause or matter: (*Ex parte Schofield*, 64 L. T. Rep. 780; (1891) 2 Q. B. 428; *Payne v. Wright*, 60 L. T. Rep. 140; 61 L. J. 114, M. C.)

*Bigham*, Q.C. and *James Fox* for the appellants.—This is not a criminal cause or matter at all. By the local Act the corporation are made a gas authority, and enter into a statutory bargain with the Birkdale local authority for the supply of gas. The proceedings under sect. 40 of the local Act are proceedings by which the complainants ask that the corporation shall pay to them the money compensation fixed by the statute to be paid for a breach of a statutory bargain. Proceedings under that section, even if taken against an individual, could not result in imprisonment. The section only imposes a liability to pay a sum of money in the nature of damages which is to be paid to the Birkdale local authority. The amount fixed by the justices becomes a statutory debt which is recoverable by action in the ordinary way. The general statute, called Jervis's Act (11 & 12 Vict. c. 43) does not apply, because this is only a civil debt. In

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THE MAYOR, *Reg. v. Kerswill* (71 L. T. Rep. 574; (1895) 1 Q. B. 1) where  
 ALDERMEN, proceedings were taken before justices, under sect. 66 of the  
 AND Towns Police Clauses Act, 1847, to recover a cab fare, and the  
 BURGESSES OF justices on an information in writing made an order to pay the  
 SOUTHPORT fare and costs, with imprisonment in default of distress, it was  
 v. held that the order was bad, because the fare was recoverable  
 THE BIRKDALE only as a "civil debt" before justices. There the fare was  
 URBAN recoverable "as a penalty." [LOPES, L.J. referred to *Reg. v.*  
 DISTRICT *Whitchurch* (45 L. T. Rep. 379; 7 Q. B. Div. 534).] In none  
 COUNCIL. of the cases which have been cited, in which it was held that  
 1897. the case was a "criminal cause or matter," was that which was  
 called a penalty payable to the complainant.

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*Moulton*, Q.C., was not heard in reply.

LORD ESHER, M.R.—I am of opinion that the preliminary objection must prevail. This is an appeal from the judgment of the Divisional Court. If that judgment was given in a criminal cause or matter, and not in a civil matter, then the appeal will not lie. When it is a question whether a matter is to be treated as being civil or criminal, it ought, I think, to be as largely as possible decided that there is no right of appeal. What was the question before the Divisional Court in the present case? Five justices, sitting as a Court of Summary Jurisdiction, acting upon an information preferred against the Corporation of Southport for an offence against the provisions of a local Act, after hearing the parties and the evidence adduced by them, convicted the corporation, and imposed a penalty of 10/. The Corporation of Southport, alleging that they were aggrieved at the said conviction as being erroneous in point of law, applied to the justices to state a case for the opinion of the Queen's Bench Division. The justices stated a case, upon which the Divisional Court gave the judgment against which this appeal is brought. Now, is that judgment of the Divisional Court a judgment upon a civil matter? If it is not a judgment upon a civil matter, is it not a judgment in a criminal cause or matter from which no appeal will lie to this Court? Before the justices a conviction was asked for under sect. 40 of the Southport Improvement Act. The latter part of that section provides that "if it shall at any time be proved to the satisfaction of any two justices, after hearing the parties, that the illuminating power of the gas supplied by the corporation in the said township did not, when so tested as aforesaid, equal the illuminating power by this Act prescribed, the corporation shall forfeit such sum not exceeding twenty pounds as such justices shall determine, to be paid to the local board." The accusation was that the corporation had not performed the obligation imposed upon them by the Act of Parliament, and a conviction was asked for, and that, upon conviction, the corporation should forfeit such sum as the justices might determine. There were, then, an information, a summons, and a conviction. It is contended that what was asked for was the payment of a debt. It is impossible



to maintain that contention. Nothing was due to anyone from the corporation for which an action could be brought. The only thing which could be done was to make an application to justices to declare that the corporation had forfeited, not damages, but a sum to be determined by the justices at their discretion. The justices could fix the amount at anything up to 20*l.*, and they did fix it at 10*l.* It is impossible to say that they did not determine that the corporation must pay 10*l.* by way of penalty for disobedience to the Act of Parliament. That being the decision of the justices, the Divisional Court was asked to say whether the justices had correctly decided that a penalty of 10*l.* must be paid, and whether the conviction upon the information was right or not. There was the infliction of a penalty, which was asked for by an information before justices by persons asking for and obtaining a conviction. Then the question which came before the Divisional Court was a question in a criminal cause or matter. The judgment was a judgment in a criminal cause or matter, and no appeal will lie to this Court. The preliminary objection must, therefore, prevail, and the appeal must be dismissed.

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LOPES, L.J.—By sect. 47 of the Supreme Court of Judicature Act, 1873, it is enacted that “no appeal shall lie from any judgment of the said High Court in any criminal cause or matter, save for some error of law apparent upon the record, as to which no question shall have been reserved for the consideration of the said judges.” The question is whether the judgment in this case is a judgment in a “criminal cause or matter.” Now, I have no hesitation in saying that it is clear that it is a judgment in a criminal cause or matter. There is every element and incident of a criminal matter. The proceedings were commenced by information; a summons was issued; there was an appearance before justices, who would adjudicate under the provisions of Jervis’s Act (11 & 12 Vict. c. 43); and the proceedings end in a conviction and the imposition of a penalty under sect. 40 of the local Act. Can anything be more like a criminal matter than that? The proceedings were before a criminal tribunal, and commenced and ended in the same way as ordinary criminal proceedings. Many cases have been cited. The most cogent is the case of *Mellor v. Denham* (42 L. T. Rep. 493; 5 Q. B. Div. 467). That was a case in which a man had been fined for not sending his child to school, and the justices stated a case. It was held in this Court that an appeal would not lie from the judgment of the Queen’s Bench Division, because it was a judgment in a criminal matter. In this case I am prepared to say, putting aside the procedure, and looking only at the provisions of sect. 40 of the local Act, by which a duty is imposed upon the corporation, that disobedience to that duty by the corporation is a misdemeanour at common law and is indictable. Looking at the case from that point of view, it is impossible to say that disobedience to the provisions of sect. 40 is not a criminal offence.



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It has been argued that imprisonment could not follow, and that therefore this is not a criminal matter. That is so in this case, because the proceedings are against a corporation. But, if the proceedings had been against an individual, it would be impossible to say that in this case imprisonment might not follow. That contention is dealt with in *Reg. v. Tyler (ubi sup.)*, and altogether fails. Then it was said that this was a debt, and that the penalty was to be recovered as a debt. I know of no instance in which a penalty recoverable before justices can be recovered as a debt. The recovery of the penalty can be enforced under the general statute, Jervis's Act (11 & 12 Vict. c. 43), or in a case like this, perhaps, by sequestration. It is quite clear that this is not a debt. I am of opinion, therefore, that the appeal to this Court will not lie.

CHITTY, L.J.—In my opinion the judgment of the Divisional Court was a judgment in a criminal cause or matter. Both in form and in substance these proceedings were criminal. They were commenced by information and summons; there was a conviction, and the imposition of a penalty. A case was stated for the opinion of the High Court, and the appellants entered into recognisances to prosecute the appeal. As to the form, then, there cannot be any doubt. As to the substance, the conclusion is the same. It is contended that the sum to be forfeited under sect. 40 of the local Act is a debt. In my opinion, it was a power to fine for non-performance of a statutory duty. Sect. 40 provides that "if it shall at any time be proved to the satisfaction of any two justices after hearing the parties, that . . . the corporation shall forfeit such sum not exceeding 20*l.* as such justices shall determine, to be paid to the local board." That is not a debt at all. I cannot see that there is anything in the argument that after the determination by the justices the sum could be recovered by action. There is, in my opinion, no ground for saying that this was a statutory bargain between the two local authorities. A general duty towards the public was imposed by sect. 40. I agree, therefore, that the appeal will not lie.

*Appeal dismissed.*

Solicitors for the appellants, *Rowcliffes, Rawle, and Co.*, for *John Smallshaw*, Southport.

Solicitors for the respondents, *Mellor, Smith, and May*, for *J. W. Davies*, Southport.

## QUEEN'S BENCH DIVISION.

*Dec. 18, 1896, and March 13, 1897.*

(Before HAWKINS, CAVE, WILLS. WRIGHT, and KENNEDY, JJ.)

HAWKE v. DUNN. (a)

*Gaming—Betting—Place used for betting—What is a “place”—  
—Betting Act, 1853 (16 & 17 Vict. c. 119), ss. 1, 3.*

*Any area of inclosed ground, covered or uncovered, which is known by a name or is capable of reasonably accurate description, may be a “place” within the meaning of sect. 1 of the Betting Act, 1853.*

*The defendant, a professional bookmaker, on the occasion of a rare meeting at Hurst Park, was present, together with many other bookmakers and a large number of the general public, in an inclosure known as Tattersall's Ring, shouting out the odds and making bets on horse races with all who chose to bet. The inclosure was forty yards long by thirty wide, and was bounded on one side by the grand stand, and on the other three by a paling breast high. The defendant did not confine himself to any fixed spot, and had no stool, umbrella, or anything in the nature of a fixture to denote where he carried on betting, but moved about.*

*Held, that the defendant was using a “place” for the purposes of betting within the meaning of sects. 1 and 3 of the Betting Act, 1853. (b)*

CASE stated by justices for the Kingston Petty Sessional Division of the County of Surrey.

An information was preferred by John Hawke, the appellant, against Richard Dunn, the respondent, charging him with having, on the 4th day of July, 1896, unlawfully used a certain place, to wit, an inclosure known as Tattersall's Ring on Hurst Park Racecourse, for the purpose of betting with persons resorting thereto upon horse races, contrary to sects. 1 and 3 of the Act 16 & 17 Vict. c. 119.

The Act is as follows :

Whereas a kind of gaming has of late sprung up tending to the injury and demoralisation of improvident persons by the opening of places called betting houses or offices and the receiving of money in advance by the owners or occupiers of such houses or offices, or by other persons acting on their behalf, on their promises to pay money on events of horse racing and the like contingencies; for the suppression thereof be it enacted, &c. :

(a) Reported by G. H. GRANT, Esq., Barrister-at-Law.

(b) This decision was disapproved of by the majority of the Court of Appeal in *Powell v. Kempton Park Racecourse Company Limited*, *post*, p. 651; 77 L. T. Rep. N. S. 2; (1897) 2 Q. B. 243, in which case it was held that the “place” contemplated by the Betting Act, 1853, sects. 1, 3, is a place which is analogous in its character and use to a betting-house or office.

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Sect. 1. No house, office, room, or other place shall be opened, kept, or used for the purpose of the owner, occupier, or keeper thereof, or any person using the same, or any person procured or employed by or acting for or on behalf of such owner, occupier, or keeper, or person using the same, or of any person having the care or management, or in any manner conducting the business thereof, betting with parties resorting thereto; or for the purpose of any money or valuable thing being received by or on behalf of such owner, occupier, keeper, or person as aforesaid, as or for the consideration for any assurance, undertaking, promise, or agreement, express or implied, to pay or give thereafter any money or valuable thing on any event or contingency of or relating to any horse race. . . .

Sect. 3. Any person who, being the owner or occupier of any house, office, room, or other place, or a person using the same, shall open, keep, or use the same for the purposes hereinbefore mentioned or either of them; and any person who, being the owner or occupier of any house, office, room or other place, shall knowingly and wilfully permit the same to be opened, kept, or used by any other person for the purposes aforesaid or either of them . . . shall be liable to a penalty not exceeding 100*l*.

The information was heard on the 23rd day of July, when the following material facts were proved:

A company, called the Hurst Park Club Syndicate Limited, were the owners of certain land, many acres in extent, situate on Molesey Hurst, in Surrey, and inclosed by a tall fence or paling with gates at different points.

During the year the said company held a series of race meetings for horse races on the said land, on which were a racecourse, stands for viewing the races, inclosures, paddocks, &c., and all the usual accessories of a racecourse.

Access was obtained to the said land in the first instance by the general public through the said gates on payment of a shilling a head, and then afterwards, if desired, to three stands and inclosures on payment of a further sum of 1*l*., 10*s*., or 2*s*. 6*d*., as the case might be.

A race meeting was held by the said company, on the said land, on the 4th day of July, 1896, at which many thousands of the general public were present, and, amongst others, two witnesses, instructed on behalf of the appellant, who each paid 1*s*. for admittance to the said land, and afterwards 1*l*. each for admission to the 1*l*. stands and inclosure. In front of this stand was a piece of ground more or less level, bounded on one side by the stand and on the other three sides by an open iron fence or paling, about breast high and about forty yards long by thirty yards broad, which was generally known as Tattersall's Ring or Inclosure, or the 1*l*. inclosure.

There were present in the 1*l*. inclosure on the 4th day of July about 1000 of the general public, amongst whom there were at least fifteen bookmakers and their clerks. All the bookmakers shouted out the odds against the different horses running in the races, inviting all those resorting to the said inclosure to bet with them. When a bet was made the bookmaker named the odds he was willing to lay, received the money the backer wished to stake upon the horse in question, handed the backer a ticket with the bookmaker's name and a number upon it, and after the race, if the horse backed won, the bookmaker, on presentation of the ticket, returned to the backer

his original stake *plus* the odds in money laid by the book maker.

The respondent Dunn, who was admitted to be a professional bookmaker, was present with his clerk in the said inclosure on the afternoon in question shouting the odds, and making bets with everyone who would bet with him in the manner above described. He did not confine himself to any fixed spot, and had no stool, umbrella, or anything in the nature of a fixture, to denote where he carried on betting, but moved about.

Upon these facts, and after hearing arguments of counsel, the magistrates were of opinion that an inclosure forty yards long by thirty yards wide, capable of containing more than 1000 persons, about which the respondent moved, could not be considered a place within the meaning of the statute, and dismissed the information, but stated this case.

*Asquith*, Q.C. (*Reginald Browne* with him) for the appellant.—Here there was a definitely inclosed place to which the defendant resorted for the purposes forbidden by the statute, and that must be a “place” within the meaning of the section. They cited a large number of cases, all of which are dealt with in the judgment of the court.

*Bigham*, Q.C. (*G. H. Stutfield* with him) for the respondent.—The facts proved do not bring the defendant within the Act, which was never intended for a case such as the present. The discussion of the Bill in Parliament and the preamble show that the object of the Act was the suppression of “betting houses,” and “other place” must mean a structure of some kind, being something *ejusdem generis* with a house, office, or room. Secondly, the defendant was not using the place within the meaning of the section. The word “use” is employed in two distinct senses in the section. In the first part of the section it follows the words “owner or occupier,” and refers, therefore, to a person having a legal occupation of some kind. The defendant was only there as the rest of the public were.

*Cur. adv. vult.*

*March 13.*—The judgment of the Court, in which all the learned judges concurred, was delivered by

*HAWKINS, J.*—[The learned judge stated the facts as above set forth, and continued:] The question submitted to us is, whether the magistrates came to a correct decision in point of law, and, if not, what should be done in the premises. Before the passing of the Betting House Act, 1853, much betting and wagering on horse races had been no doubt carried on without legislative interference. It is clear from the preamble of the Act now in question that in the year 1853 a new system of betting had then recently sprung up, by the establishment of houses and offices for the carrying on in them of betting businesses of a kind which in the opinion of the Legislature tended to the injury and demoralisation of improvident persons and it is equally clear that one of the practices deemed to be

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objectionable and injurious was that of what is known as “ready money betting,” viz., that the person making the bet deposited with the bookmaker the money which he was disposed to adventure. It is true that the preamble has been repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19), by which it is provided that such preamble may be omitted from any revised edition of the statutes; but the same Act provides (sect. 1) that the repeal shall not affect the operation or construction of the statute, and it is therefore legitimately to be referred to as affording information of the circumstances under which the Act came to be passed, and in so far as it directly throws light upon the question of the object which the Legislature had in view. It expressly declares that one object at least proposed by the Legislature was the suppression of this kind of gaming. It was therefore not merely to prevent its being carried on in houses or offices that the Act of 1853 for the suppression of betting houses (16 & 17 Vict. c. 119) was passed. Now, to pass an Act simply to forbid such gaming in houses or offices would have been comparatively useless; it would have been to leave open a host of places not falling within the description of houses or offices, and impossible to describe by anticipation, where with equal facility and equally demoralising effect such obnoxious betting might be carried on with impunity: (see per Lush, J., in *Haigh v. Town Council of Sheffield* (31 L. T. Rep. 536; L. Rep. 10 Q. B. 109). If I have correctly interpreted the object and intention of the Legislature I must say, with all respect to the views of those who in some of the cases hereafter mentioned have intimated a different opinion, it seems to me it would be frittering away the provisions of the Act to hold that a well-defined inclosure, known by a particular name, and devoted to be used as a betting ring, could not be treated as a “place” within the meaning of the Act, unless the person charged with using it for the particular forbidden purposes confined himself to a single spot indicated by some such thing as a stool or a box to stand on, or an umbrella stuck in the ground spread over his head, and that by changing his position from time to time, by walking about and making his bets upon different spots in the same ring he could avoid the penalties because he was not using a *place*. To me this view is unintelligible, and it becomes more so when we find, as we shall when I discuss the authorities, that, for permitting several bookmakers to wander about in and use the whole inclosure generally for the forbidden kind of betting, the owner or occupier might be convicted of permitting an illegal use of the place; yet that none of such bookmakers could be convicted of actually using it because each of them used every or any part of the inclosure at his pleasure, and did not confine himself to one fixed spot in it. The Act, by sect. 1 forbids “the opening, keeping, or using any house, office, room, or other place, for the purpose of the owner, occupier, or keeper thereof, or any person using the same or con-



ducting the business thereof, betting with persons resorting thereto; or for the purpose of any money or valuable thing being received by or on behalf of such owner, occupier, keeper or person as aforesaid, as or for the consideration of any bet on any horse race," and declares that "every, house, office, room, or other place opened, kept, or used for the purposes aforesaid, or any of them, shall be a common nuisance;" and by sect. 2, "shall be taken and deemed to be a common gaming house." It will be observed that the two sections I have just referred to have no other effect than to taint with illegality for the time being any house, &c., or other place opened, kept, or used for the purposes mentioned. The 3rd section is that which deals with the persons who open, keep, or use houses, &c., for such illegal purposes. It enacts that "Any person who, being the owner or occupier of any house, room, office, or other place, or a person using the same, shall open, keep, or use the same, or permit the same to be opened, kept, or used for the purposes mentioned in sects. 1 and 2, and either of them shall on summary conviction thereof be liable to forfeit a penalty not exceeding 100*l*." It is under this section that the respondent was charged in the information. Undoubtedly this section is not quite so clearly framed as it might have been; and this defect has given rise to much discussion and confusion as to the proper interpretation to be put upon it. For the respondent it is contended that the words "other place" means some other place *ejusdem generis* with a house, office, or room. I of course recognise the usual rule observed in the construction of Acts of Parliament, that general following specific words should be limited to things *ejusdem generis* with those before enumerated; but this rule of construction must be controlled by another equally general one that Acts of Parliament ought, like wills or other written documents, to be construed so as to carry out the object sought to be accomplished by them, so far as it can be collected from the language employed: (see *Harrison v. Blackburn*, 17 C. B. N. S. 689, per Erle, C.J. and Byles, J.; *Campbell v. Prescott*, 15 Ves. 503, per Sir W. Grant, M.R.) In my opinion, to limit the meaning of the words "other place" to some other place *ejusdem generis* with a house or office, would have the effect of defeating, not of forwarding, the object of the Legislature; and I cannot imagine that with the desire to suppress that kind of betting mentioned in the preamble, it was in contemplation to afford it a sort of sanctuary in a betting ring or in any other place not *ejusdem generis* with a house or office. The interpretation to be given to a similar expression used in the statute 42 Geo. 3, c. 118, making it penal for any person to keep any office or place to exercise any lottery, is expressly declared by 4 Geo. 4, c. 60, s. 60, to be any place in or out of an inclosed building whether upon land or water, where illegal practices shall be carried on. This confirms me in the view I have taken. I am further confirmed in this view by the authorities hereafter cited,

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of each of the courts of common law. Upon a careful consideration of these authorities I cannot say that all are equally satisfactory; but there is not one of the judgments which as distinguished from dicta not material to the judgment, is against the contention of the appellant in the present case. The case of *Doggett v. Catterns* (12 L. T. Rep. 355; 17 C. B. N. S. 669) is that which has been most often cited in favour of the views of the respondent. The judgment itself in that case really decides nothing affecting the present question; but the dicta of the majority of the judges are in favour of the appellant’s views. It was an action brought under sect. 5 of the statute of 1853 to recover back from the defendant money received by him from the plaintiff as a deposit on a bet contrary to sect. 4, which makes it a penal offence for any person, being the owner or occupier of any house, office, room, or place used for the purpose aforesaid to receive such a deposit. The defendant, a bookmaker, was carrying on under a clump of trees in Hyde Park his betting operations with many persons who resorted thereto. The plaintiff was one of such persons, and he backed with the defendant for 5*l.* 10*s.* a horse about to run at the Lincoln races, and paid then and there a deposit of that sum. The defendant thereupon laid him odds against the horse. The horse did not win, and this action was then brought by the plaintiff against the defendant to recover back his deposit. The case was argued first in the Court of Common Pleas before Erle, C.J. and Keating, J., who gave judgment for the plaintiff. That judgment, however, was reversed in the Exchequer Chamber, on the ground that the defendant was not the owner or occupier of the spot on which the betting took place within the meaning of sect. 4. This was quite right, for undoubtedly the defendant was neither owner nor occupier of any part of Hyde Park. The question whether the spot under the trees was a place within the meaning of sects. 1 and 3 was not judicially determined, nor was it under the circumstances essential to the judgment. In the Court of Common Pleas, however, in reference to its being a place, Erle, C.J. said “The mischief is to my mind precisely the same, whether the party stands under the shelter of an oak tree, or of a roof or covering of canvas.” Later on, when speaking of the intention of the Legislature, the Chief Justice said: “It was intended to present every possible obstacle to the professed gamester using a place for exercising his vocation, and for that purpose to prohibit the keeping or using of any known place for the receipt of deposits on the contingency of a particular horse running and winning at a horse race.” In the Exchequer Chamber, the Court being composed of Pollock, C.B., Crompton and Blackburn, JJ. Bramwell and Channell, BB., Mellor, J., and Pigott, B., all agreed that the judgment of the Common Pleas should be reversed upon the ground I have already mentioned. But Pollock, C.B., Crompton and Blackburn, JJ., and Channell, B. substantially agreed with Erle, C.J., and Keating, J.

in thinking the spot was a place within the meaning of the Act, Bramwell, B., Mellor, J., and Piggott, B. holding an opposite view, on the ground, as was stated by Bramwell, B., that it was not a place capable of being used within the meaning of the Act. And Pollock, C.B. in his judgment is reported to have said that the place had not the possibility of an owner or occupier. I cannot think that these reported expressions quite represent what the learned judges intended to convey. Bramwell, B. must have meant that it was not capable of being used within the meaning of sect. 4, because the man who used it was neither owner nor occupier; and Pollock, C.B., not that it was not possible for it to be owned or occupied by anybody, but that it could not be owned or occupied by the defendant. As a matter of fact it was used, and also as a matter of fact it was owned by the Crown and capable of occupation. Various spots in Hyde Park are used daily, and anybody visiting Hyde Park will find orators, preachers, singers, lecturers, reciters, agitators, and occasionally comic entertainers and orchestras using various greater or smaller areas in it. Do none of these occupy places? Blackburn, J. to my mind, put the decision in *Doggett v. Catterns* on its proper footing. These are his words: "I do not say that an open field is not a place which may come within the description of the term place in the statute; but it is necessary to show that the person against whom the action is brought (under sect. 5) is either owner or occupier of the place or acting on behalf of the owner." Thus it will be seen that of the nine judges before whom the case was argued six expressed opinions that the spot under the trees was a place. *Doggett v. Catterns*, therefore, is in favour of and not against the appellant in this case. In *Shaw v. Morley* (19 L. T. Rep. 15; L. Rep. 3 Exch. 137) the appellant, as clerk to a bookmaker, sat at a desk placed on, but not affixed to the soil, in an uncovered inclosure close to the grand stand at Doncaster, managing a deposit betting business there. Kelly, C.B., Martin and Piggott, BB. held that it was both an office and a place, and that the business carried on was the very thing the Act was intended to prevent. In *Eastwood v. Miller* (30 L. T. Rep. 716; L. Rep. 9 Q. B. 440) the appellant was charged with permitting a certain place, to wit, a field, to be used for the purpose of betting. The field referred to was an inclosure, in extent nearly four acres, and was known as the Dewsbury Borough Park Ground. On the day named a pigeon-shooting match was about to take place, a number of people were admitted to the ground, of which the appellant was in fact the sole occupier, and he received entrance money. Inside the inclosure, among the persons so assembled, were two bookmakers with books, shouting out the odds on the match, and betting with those disposed to bet, receiving money by way of deposit from their customers. The appellant stood by, and could see what was going on, but said and did nothing. The justices found that the ground was a place within

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the meaning of the Act, and that the appellant permitted it to be used for the purposes forbidden by sects. 1 and 3, and convicted him. On appeal against this conviction, Lush, J. in his judgment, said: “First, was it a place? It could hardly be contended that ground uncovered cannot be a place within the meaning of the Act. I see no reason whatever from the framing of the Act to hold that there cannot be a ‘place’ within the meaning of it unless there is a structure of some kind—a building or a tent . . . It is an inclosed place, occupied exclusively by the appellant. The fact that it is a large inclosure cannot affect the question, if it is a place occupied and inclosed, within the meaning of the Act to which persons were admitted by the sufferance of the occupier.” The fact that the appellant was the sole occupier only showed more clearly that he had the fullest power to check the use of it, otherwise it was immaterial. As to whether the place was used for the purpose of betting within the meaning of the Act, the same learned judge said: “It is objected that it was only shown that on one occasion this was done; and, moreover, it was objected that the primary object of keeping the place was not for the purpose of betting but for the purpose of pigeon shooting. I cannot take this view of the evidence.” Archibald, J. concurred. They agreed that *Doggett v. Catterns*, which was cited for the appellant, did not govern the case, and affirmed the conviction. In *Haigh v. The Town Council of Sheffield* (L. Rep. 10 Q. B. 102) the Court (Blackburn, Mellor, and Lush, JJ.) upheld the conviction. It would be inconvenient to set out the judgments at length, but each is well worthy of perusal. It is difficult to draw any substantive distinction between these two cases and the present. Here the respondent used the inclosure himself; in those cases the then appellants permitted the user by others: (see also *Reg. v. Cook*, 51 L. T. Rep. 21; 13 Q. B. Div. 385). In *Bows v. Fenwick* (30 L. T. Rep. 524; L. Rep. 9 C. P. 339), the appellant was convicted of using a place on the racecourse, the Roodee at Chester, for the purpose of betting. He stood on a stool on the Roodee, over which was spread a large umbrella, open and supported by a long stick or handle stuck in the ground by a spike. From this stool and under this umbrella the appellant called out the odds against the various horses, made bets, received deposits of money, and gave tickets. It was not disputed that this was betting within the penal clauses of the Act. The only real question was whether it was an “other place” within the meaning of sects. 1 and 3. The Court (Lord Coleridge, C.J., Brett, and Denman, JJ.) held that the spot used was such a place; that to constitute such a place it should be fixed and ascertained, and Lord Coleridge, C.J. said there was (to use his own words) “sufficient fixity of the structure by means of the spiked umbrella,” and he distinguished that case from *Doggett v. Catterns* upon the ground that there was in the latter case “no

ascertained place within the ambit of the park in which the appellant (the defendant in that case) carried on his avocation." The conviction was affirmed. In the actual judgment I entirely agree, for the evidence to support it was overwhelming, but I am not prepared to accept the dicta of the learned Chief Justice if he intended to suggest the necessity that to constitute a place the precise spot used by the appellant to carry on his betting should be indicated; nor to agree in the distinction between *Doggett's* case and that he was deciding. The "place" used by the appellant was the whole inclosure. He was entitled to use every part of it, and to change his location within it as often as he thought fit; but, however often he changed it, he was still using the inclosure, a defined fixed locality, known by a name, in which he could readily announce himself to all persons resorting thereto, and they could as readily find him. The fact that the appellant did actually indicate in the manner stated the exact spot on which for the time being he was, merely added to the evidence of the user, but no case decides it was essential. Supposing a well-known inclosure to be only ten yards square, could it be said that that would not be a place, unless the precise spot in it on which the person using it stood were indicated? And if the appellant in the case I am now discussing had moved his stool twenty times to different spots within the inclosure, and at each spot had remounted his stool and resumed his betting, would he not still be using the one place he had paid for admission to and not twenty different places? The case of *Galloway v. Maries* (45 L. T. Rep. 763; 8 Q. B. Div. 275), before Groves and Lopes, JJ., was very similar to that of *Bows v. Fenwick*. The respondent Maries was charged with using a place, the grand stand inclosure and the ring in Four Oaks Park, for the purpose of betting, &c. The respondent and another man acting with him paid for admission to the park and ring, and therein the respondent's companion stood on a wooden box in no way fixed to the ground and unsheltered by any umbrella; the respondent stood off the box on the ground by his side. They jointly carried on betting operations such as in the last case—one on, the other off, the box. The justices held that neither the inclosure, nor the box, nor the two combined, constituted a place, and dismissed the charge. The case is amusing. The respondent and the justices having evidently read the dicta of Lord Coleridge in *Bows v. Fenwick*, thought that the stool and spiked umbrella fixed in the ground were essential to the constitution of a place, and accordingly both the bookmakers and the magistrates thought the statute could be successfully evaded by the bookmaker abandoning the stool and umbrella, and by one of them using merely an unattached box to stand upon, and by his partner standing on the ground. The Court defeated this ingenious attempt by reversing the decision of the justices. There again there was a superabundance of evidence to support a conviction, and the

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dicta were unnecessary for the judgment, which was clearly right. These two last cases establish nothing which goes beyond this, that if a fixed spot such as suggested was essential to be indicated, it was in fact indicated by the stool, umbrella, or box. But no case was cited in which a conviction has been quashed because of the absence of such indication. Such a case would have required more consideration. The case of *Snow v. Hill* (52 L. T. Rep. 859; 14 Q. B. Div. 588), which the magistrates read as governing the present case, does not, in my opinion, by any means do so. The appellant Snow was charged with using a place, to wit, a field, at West Brompton, in Staffordshire, for the purpose of betting with persons resorting thereto. Dog races were held in an inclosed field about five acres in extent. The public were admitted on payment to a portion of the field about 110 yards long by seven yards deep, roped off from that part of the field on which races were run. Many hundreds of persons including the appellant, were present. The appellant walked about and made bets, and received from and paid money to, other persons who were there. He had no particular location on the reserved space, and carried no distinctive mark. It was not even found that he was a bookmaker, or that he did anything to indicate that he was exercising such a calling; for aught that appeared he was only one of the persons resorting to the inclosure, and did no more than any of them might innocently do, and there was no evidence that he received any money on deposit or otherwise than in payment of bets he had won. The magistrates, however, erroneously thought the case governed by *Eastwood v. Miller*, and convicted him. An appeal against the conviction was heard by Lord Coleridge, C.J. and Smith, J., who reversed that decision. In so doing they were absolutely right. Smith, J. pointed out, in delivering the judgment of the Court, that the mere fact of a person resorting to a place and betting with others he finds there is no offence under the Act. It is significant that the respondent did not even appear or make any attempt to support the conviction. *Snow v. Hill* is, therefore, no authority for the respondent in this case. Two cases, *Whitehurst v. Fincher* (17 Cox C. C. 70; and *Hornsby v. Raggett* (1892) 1 Q. B. 20; 17 Cox C. C. 428) were cited to us, the former as an authority in favour of the respondent, the latter as an authority for the appellant. They require a little close attention and consideration, for on a mere cursory glance at the head-note of the first of them as reported, they appear to be a little contradictory. They are, however, not at all so when really understood. The first of them, *Whitehurst v. Fincher*, was argued before Fry, L.J. and Mathew, J. Fincher, the defendant, was charged with using the bar room of a public-house for the purpose of betting with persons resorting thereto. The facts were as follows: Fincher on three successive days went to the bar room of the Dartmouth Hotel, at West Bromwich, for the purpose of betting on horse races, and did there, in fact, bet with persons resorting



thereto. He occupied no specific part of the room, which was a public one, and he had no other interest of any kind in the house. There was no evidence that he was a professional betting man. For aught that appeared the defendant only resorted to the bar as one of the public, and when there did in fact make bets with persons whom he met. The magistrate took this view of the evidence and held that this was not such a user of the room as was contemplated by the 3rd section of the statute. In his judgment supporting the magistrate's decision, Mathew, J. is reported to have said that it was not sufficient merely to show that the defendant went to the bar room and made bets, and he thought that on the facts proved *Snow v. Hill* governed the case. I recognise the soundness of that decision on the facts found, for there is no more illegality in making a casual bet in a room not wholly or partially devoted to betting than there is in making it in a field with a person who is casually found there. *Hornsby v. Raggett* was a very different case. There Raggett, the respondent, was himself the occupier of "The Chimes" licensed beerhouse at Poplar. The magistrates found as facts that on four different days a professional bookmaker and his clerk were in the bar and tap room for the purpose of betting, that they did bet with persons resorting thereto on horse races, and received deposits on the bets made, and that the defendant knew of and permitted such user. As a matter of fact, neither the bookmaker nor his clerk used any part of the house except the bar and tap room, and these only in common with the ordinary customers of the house. The magistrate dismissed the summons on the authority of *Whitehurst v. Fincher* and *Snow v. Hill*. On appeal the Court (Mathew and Smith, JJ.) held the magistrate to be wrong, Mathew, J. holding that it was not necessary to a conviction that the room or place should be used exclusively for betting; that to render the bookmaker liable it would be enough to show that he was in a room for the purpose of inviting people to come and bet with him, and that the respondent, the occupier, was liable for permitting such use. In explaining his judgment in *Whitehurst v. Fincher* as supporting the case then before him, that learned judge said: "In the present case the betting was not casual, but the room was constantly and systematically used by a professional bookmaker for the purpose of betting with persons resorting thereto." In this Smith, J. concurred. It is clear that the distinction between the two cases—whatever particular expressions may have been used or may appear in the report of *Whitehurst v. Fincher*—is, that in that case the use of the room was not for betting as a business, but all that was done was that the defendant had casually betted there with three or four people; whereas in *Hornsby v. Raggett* the betting for which the room was used was that carried on as a business by a professed or professional bookmaker. In considering the question of user I can see no difference between a betting ring and a room used for the same purpose. *McWilliam v.*

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*Dawson* (56 J. P. 182) was a charge against a bookmaker for using a place under sect. 3. The bookmaker was seated in the bar of a public-house on several days for nearly an hour—not always in the same spot—betting on horse racing with a number of persons who frequented the house. Some paid to and others received from him money on account of bets. It was found that he used the bar for the purpose of betting with them, but that he had no exclusive use or occupation of the bar or any part of it. The magistrates refused to convict. On appeal, Mathew and Smith, JJ. held that the case could not be distinguished from *Hornsby v. Raggett*, and that the bookmaker was liable to be convicted of using a place for the purpose of betting under sect. 3, and that the same reasons applied to the licence-holder. In *Reg. v. Worton* (72 L. T. Rep. 29; (1895) 1 Q. B. 227) it was held that evidence that on three successive days the defendant was in the bar of a beerhouse, that a number of persons came in, took slips of paper hanging on the wall, wrote on them the names of the horses they wished to back, wrapped up in them the money they wished to stake, and handed the slips with the money inclosed to the defendant, furnished sufficient evidence to go to the jury upon an indictment under sect. 3, and the jury rightly found that the defendant had used the bar for the purpose of betting with persons resorting thereto: (per Lord Russell, C.J., Pollock, B., Hawkins, Lawrance, and Wright, JJ.). *Liddell v. Lofthouse* (74 L. T. Rep. 139; (1896) 1 Q. B. 295) is the latest case to be found in the Common Law Reports bearing on the question as to what is any “other place.” The respondent Lofthouse was charged at the Stockton-on-Tees Police-court with having used a place situated on the river side for the purpose of betting with persons resorting thereto. The place in question was called Hubback’s Quay, partly surrounded by a hoarding supported by wooden stays driven into the ground. On three consecutive days the respondent was found at the back of this hoarding, between the same two stays, calling out the odds on horses and betting with persons coming to him. The justices found that he went to this spot for the sole purpose of making a book on horse races, and because he knew there would be a number of persons wanting to back horses there. The justices, however, doubting whether the spot was a place, declined to convict. On appeal, Lindley and Kay, L.JJ., sitting as a Divisional Court, held that it was a place, and that the justices were wrong in not convicting. That this decision on the facts stated was right there can be no shadow of doubt, and it needed not the aid of the stays to support it. I will but refer to my own judgment in *Reg v. Preedy* (17 Cox C. C. 433), in which I fully discussed the question now before us, and to which I adhere. Nor do I think it would materially assist the solution of the question before us to cite any of those cases which have been decided upon charges under the Licensing Act, for they stand on a different footing; nor to those cases which are to be found forbidding any gaming in public streets,

&c., for they depend on special enactments; nor the cases deciding what are public places under the Vagrant Acts. I prefer to decide this case upon principle and upon authorities directly bearing upon it. It is not possible to give so precise a definition of what is an "other place" as shall be applicable to every imaginable state of facts. Each case must of necessity depend and be decided upon its own particular circumstances. But, after very careful consideration, I have arrived at the conclusion that any area of inclosed ground (expressing no opinion as to uninclosed areas), covered or uncovered, which is known by a name, or is capable of reasonably accurate description, to which persons from time to time or upon any particular occasions or occasion resort, and who may very properly be described as resorting thereto—used by a professional betting man for the purpose of exercising his calling and betting with such persons, or for the purpose of carrying on a ready-money betting business, may be a place within the meaning of the statute. Metes and bounds are not essential, and it matters not, in my opinion, whether for his own convenience the bookmaker chooses to remain during his hours of attendance upon one particular spot within that area, or whether he prefers to move about within that area from one spot to another as he is minded. The Act speaks of an other "place," not a spot in a place. If to make it a place the bookmaker must fix himself on and use only one spot, he would always have it in his power to evade the Act by wandering over the whole area. Assuming the ring in question was a place within the meaning of the statute, there was, in my opinion, abundant evidence of such user of it by the respondent as was forbidden by sect. 3. It was indeed suggested that there could be no illegal user of any place, unless such place could be fairly described as then already opened, kept, or used, that is, appropriated wholly or in part for the illegal purposes mentioned in sect. 3. *Morley v. Greenhalgh* (3 B. & S. 374) was cited in support of this suggestion. That case, however, as also did *Clark v. Hayne* (8 Cox, 327), turned upon the peculiar language of 12 & 13 Vict. c. 92, forbidding cockfighting in a place used for that purpose, and does not assist in the present discussion. In my opinion, a person using a place, though it be for the first time, for the forbidden purposes is liable to be convicted under sect. 3: (see per Blackburn, J. in *Haigh v. Sheffield*, L. Rep. 10 Q. B. 108). At one time it was looked upon as a doubtful question whether the Legislature intended the enactments to prohibit, and whether in fact they prohibited, anything more than that class or kind of gaming which consisted of receiving deposits of money as the consideration for bets on future events described in the now repealed preamble of the Act. I am of opinion that such restricted interpretation of the enacting clauses would be to do violence to the very plain unmistakable words used in them. Moreover, the question was judicially set at rest by *Bond v. Plumb* (17 Cox C. C. 749), where it was held by Lord Coleridge, C.J. and

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Collins, J. that betting with persons resorting to a place, and receiving deposits or bets, were distinct offences: (see also *Reg. v. Brown* (72 L. T. Rep. 22; (1895) 1 Q. B. 119, and *Reg. v. Worton* (1895) 1 Q. B. 237). In the cases before us there was, in my opinion, abundant evidence that the respondent used the Tattersall's Ring at Hurst Park for both purposes. In dealing with the evidence in each particular case the magistrates should always bear in mind that the law does not forbid betting itself, nor is the business or avocation of a bookmaker necessarily illegal: (*Thwaites v. Coulthwaite*, 74 L. T. Rep. 164; (1896) 1 Ch. 496.) But what the Legislature has forbidden, and what it has pronounced to be illegal, is the use by those who make a trade and business of betting, of any place for the purpose of betting with persons resorting thereto, or for the purpose of receiving either themselves or by any other person any money or valuable thing as the consideration for a bet on any event of any horse race, &c. We are not called upon to do more than declare our opinions upon the law as applicable to cases like the present. Whether an individual charged with infringing the law has in fact been guilty of such infringement it is the duty of the magistrate to determine, bringing their best intelligence honestly to bear upon each particular case, having regard to the facts before them. In the present case we are of opinion that the justices took an erroneous view of the law, and the case must therefore be remitted back to them.

Solicitors for the appellant, *Malkin and Co.*

Solicitor for the respondent, *T. Allingham.*

## QUEEN'S BENCH DIVISION.

*Wednesday, March 31, 1896.*

(Before **HAWKINS** and **LAWRANCE**, JJ.)

**REG. v. PELLY AND ANOTHER** (Justices). (a)

*Licensing Acts—Licensed premises—Closing hours—"Found drunk on licensed premises" during closing hours—Liability to conviction—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 12.*

*Licensed premises do not cease to be licensed premises during closing hours, and when they are actually closed to the public. Consequently, a customer who, being neither a lodger nor inmate of the house, is found drunk on the premises during*

(a) Reported by **W. W. ORR**, Esq., Barrister-at-Law.

*closing hours, and when the premises are actually closed to the public, may properly be convicted under sect. 12 of the Licensing Act, 1872, of being found drunk on licensed premises."*

*Lester v. Torrens* (2 Q. B. Div. 403) distinguished.

**R**ULE for a *certiorari* to quash a conviction.

The applicant for the rule, one Albert Lacey, was summoned at a Court of Summary Jurisdiction, held on the 9th day of January, 1897, at Ongar, in the county of Essex, on a charge of being found drunk on licensed premises, namely, the Bell Inn, in the parish of Chipping Ongar, contrary to the provisions of sect. 12 of the Licensing Act, 1872; and he was convicted and fined 5s. and costs.

Lacey had gone into the public-house in question on the evening of Sunday, the 20th day of December, 1896; he did not leave the house at closing time, which was ten o'clock, when the other customers left, and when the house was closed to the public. A police constable, who was on duty near the Bell Inn, suspecting that all the customers had not left the house, gained admittance to the premises about a quarter past ten o'clock, and in the private bar he found Lacey drunk and leaning across the counter talking to the landlord of the house. Upon the constable asking why Lacey was there at that time, both the landlord and Lacey stated that he (Lacey) had previously during the same evening engaged and paid for a bed at the inn for that night, and that, therefore, he was a lodger in the house.

The justices, however, disbelieved the evidence given to the effect that the defendant had engaged a bed at the inn for that night; and they found as facts that the defendant was not on the night in question a lodger or inmate at or in the licensed premises, and was not intending to sleep there that night; that when the constable gained admittance during the closing hours—the house having been closed to the public at the closing hour, ten o'clock—the defendant was there and was drunk on the licensed premises, and they accordingly convicted him of being found drunk on licensed premises contrary to the provisions of sect. 12 of the Licensing Act, 1872 (35 & 36 Vict. c. 94) which enacts:

Every person found drunk in any highway or other public place, whether a building or not, or on any licensed premises, shall be liable to a penalty not exceeding ten shillings, &c.

A rule for a *certiorari* to quash the conviction was obtained by the defendant upon the ground that "licensed premises" in sect. 12 of the Licensing Act, 1872, means premises which are open to the public and before closing time, and that as the defendant was found upon the premises during closing hours, he was not upon "licensed premises" within the meaning of sect. 12; and this rule was granted on the authority of *Lester v. Torrens* (2 Q. B. Div. 403.)

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*J. C. Earle*, for the justices, showed cause.—The rule seems to have been granted on the ground that Lacey was on the night in question a lodger or inmate in the inn, but the justices have found as a fact that that was not so, and therefore that cannot be now raised. The ground stated in the rule is that the licensed premises are licensed premises only when they are open to the public; and that the moment closing time arrives and when the premises are actually closed to the public they cease to be licensed premises until they are again open to the public. The real question therefore is whether the licensed premises remain licensed premises after closing hours, and whether the justices ought to have applied the doctrine laid down in *Lester v. Torrens* (2 Q. B. Div. 403) to a case such as this where the person found drunk on the premises was neither a lodger nor inmate of the house. In *Lester v. Torrens* (*ubi sup.*), it was held by Mellor and Lush, JJ. that where the licensed person himself was found drunk during closing hours on his own premises where he resided, he could not be convicted under sect. 12. That case is entirely different from the present, as there the person charged was in his own house when the house was closed and everybody excluded except the inmates, and the decision simply was that the publican himself could not be fined under this section for getting drunk or being found drunk on his own premises after closing hours. That principle does not apply here where the person found on the premises was neither landlord, nor lodger, nor inmate of the place, and the reason given by Mellor, J. cannot apply here, as the justices have found that Lacey had no right or business to be in the house at the time. Lacey could have been convicted under sect. 25 for being found on the premises during closing hours; and the landlord could have been convicted under sect. 24 for not having properly closed his premises at the closing hour, so that in fact Lacey was on licensed premises which had not been properly closed, and was found drunk thereon. Again, a *bonâ fide* traveller has a right to go into premises during closing hours; if he does so and gets drunk, then, if the contention on the other side be right, he cannot be convicted because, although on the premises, the premises are not open to the general public. That result would present serious difficulties, but no difficulty at all would arise as to a *bonâ fide* traveller if my contention be right, which is that licensed premises are and remain licensed premises during the whole time from the time the licence is granted until it expires. He referred to *Redgate v. Haynes* (33 L. T. Rep. 779; 1 Q. B. Div. 89.)

*John Ogle* in support of the rule.—The rule was granted on the authority of *Lester v. Torrens* (*ubi sup.*), in which two points were raised, whether the landlord could be convicted under sect. 12 or only under sect. 13, and whether or not the premises were licensed premises after closing hours. I rely on that case as being not merely an *obiter dictum*, but as being in point here, and although I do not contend that it is conclusive, the judgment



of Mellor, J. points distinctly to the conclusion that the premises ceased to be licensed premises for the purposes of sect. 12 at the closing hour. So far as the public are concerned a licensed house when closed at the closing hour becomes a private house, and is no longer a public licensed house, and as the closing time limits the time during which the public are entitled to use the house, so also it limits the time during which the house is a public licensed house. The moment the doors of this house were securely fastened at ten o'clock, then the premises were closed and ceased to be "licensed premises" within sect. 12. The point of division is the closing time, and at that time it is the duty of the landlord to clear the house and close the doors; but if he closes the doors, though he does not clear the house of all customers, it would not follow that sect. 12 would apply. As to sects. 13 and 17, the words used are "premises" merely, not "licensed premises"; and that explains the decision in *Reigate v. Haynes* (*ubi sup.*), where the conviction was under sect. 17 for suffering gaming on the "premises" merely, which would apply to the premises all night. The case of a *bonâ fide* traveller is different, as he would be legally on the premises, whereas the defendant in the present case was illegally there. So far as the decision in *Lester v. Torrens* (*ubi sup.*) goes, for the licensed person you can read private person, and the same principle and reasoning apply in each case. I base my contention on the judgment of Mellor, J. in that case.

HAWKINS, J.—I am of opinion that this rule ought to be discharged. The conviction which is sought to be quashed is a conviction under sect. 12 of the Licensing Act, 1872, which says that a person who is "found drunk on any licensed premises shall be liable to a penalty not exceeding ten shillings." [The learned judge stated the facts and proceeded.] The defendant was found drunk, under the circumstances I have pointed out, on these licensed premises, and there is no reason to suppose he did not go there for the purpose of drinking or using these premises as licensed premises; and, unless there was some lawful excuse for his being there, the landlord of the premises would be answerable for his being there in such a condition, and, indeed, for his being there at all, and consequently the landlord gave an excuse which was found by the justices to be absolutely untrue. Now, ten o'clock was the closing hour for this house, and it is said that, if a man is found drunk on the premises ten minutes before ten o'clock, he would have been liable to this penalty of 10s. under sect. 12; but that, if he remained after ten o'clock for the purpose of getting sober or getting more liquor, as the case may be, then, after closing hour, he could not be fined 10s.; and, in order to support that contention, the case of *Lester v. Torrens* (*ubi sup.*) was quoted. I may say, with regard to the decision in that case, that I absolutely agree with it, as that was a charge brought against the occupier of the licensed premises himself, and the charge had reference to his

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being found drunk in his own house when the house was absolutely clear of customers, the day's work over, and the house actually closed to the public, and the landlord lived on the premises, and it was his private dwelling-house. The Court said that the meaning of the Act could not be that a man, under such circumstances, would be liable to a penalty under the section, and, in my judgment, it would be very unreasonable to construe the Act in any other way. He was a private individual in his own house, doing that which every man may do in his own house. Here, it is perfectly true, the defendant went into this licensed house for the purpose of getting drink, and was found drunk there after closing hours, being neither the landlord, nor a lodger, nor an inmate of the house. He was, to my mind, found drunk on licensed premises, within the meaning of sect. 12; and, in my opinion, the construction of the section is fortified by sect. 25, which imposes a penalty not exceeding 40s. upon any person found without lawful excuse on premises during any period during which the premises are required to be closed; so that, according to that section, if, during any period during which the premises are required to be closed, any person is found in them without reasonable excuse, such person is to be liable to a penalty not exceeding 40s. If he had been found sober on the premises during closing hours he would, under sect. 25, be liable to a penalty of 40s.; but if found drunk on the premises during closing hours he would, if the defendant's contention be correct, be liable to no penalty at all. I think if a man goes in and uses a licensed house and gets drunk in it, and remains in the house when he has no right to be there—a house, in fact, which he has no excuse at all for entering, except to use it as a licensed house—he is liable to be convicted under sect. 12. I think, therefore, the justices were right, and that this rule ought to be discharged.

LAWRANCE, J.—I am entirely of the same opinion. The case of *Lester v. Torrens* (*ubi sup.*) does not apply to such a case as this; and, in fact, if it were not for the judgment of Mellor, J. in that case, there would be no ground at all in support of the defendant's contention here. But even in the judgment of Mellor, J. there is an expression which is rather in support of this conviction than otherwise, because he says that the house was closed and “everybody excluded but the inmates.” The facts here are entirely different; and under these circumstances, thinking, as I do, that *Lester v. Torrens* (*ubi sup.*) is rather an authority in support of this conviction, I think that this rule must be discharged.

*Rule discharged.*

Solicitors for the applicant, *Haynes and Clifton*, Romford and London.

Solicitors for the justices, *Beaumont, Son, and Rigden*, for *Charles Smith*, Ongar.

## COURT OF APPEAL.

*Monday, July 5, 1897.*

(Before Lord ESHER, M.R., LINDLEY, LOPES, SMITH, RIGBY, and CHITTY, L.JJ.)

POWELL v. THE KEMPTON PARK RACECOURSE COMPANY LIMITED. (a)

APPEAL FROM THE QUEEN'S BENCH DIVISION.

*Gaming—Place used for betting—Inclosure on racecourse—  
Betting by bookmakers—"House, office, room, or other place"—  
Betting Houses Act, 1853 (16 & 17 Vict. c. 119), ss. 1 and 3.*

*In the expressions "house, office, room, or other place" and "house, office, room, or place" used in the Betting Act, 1853, the word "place" is to be limited in meaning to a place of the same nature as a betting-house or office.*

*Adjoining a racecourse, and forming part of it, was an open inclosure, surrounded by iron railings, about a quarter of an acre in extent. In this inclosure, on one side of it, stood the grand stand. Any member of the public was admitted by the owners of the racecourse to this inclosure on race days on payment of 1l. The number of persons admitted on race days varied from 500 to 2000, and of these a certain number varying from 100 to 200 were professional bookmakers. These bookmakers were admitted on exactly the same terms as any member of the general public, and had no special rights in the inclosure. Of the other members of the public in the inclosure the greater number went there for the purpose of backing horses, but a certain number did not bet at all. No bookmaker confined himself to any fixed spot in the inclosure, or used any such apparatus as a desk, stool, umbrella, or tent, though any particular bookmaker was usually to be found in or near the same part of the inclosure. No betting lists were exhibited. With a few exceptions betting in the inclosure was confined to races just about to be run. The practice of calling out the odds was largely adopted by the bookmakers for the purpose of attracting the attention of backers. No person in the inclosure had any greater or less right to act as a bookmaker than any other person, although in practice only a small number acted as such. Some bookmakers betted on credit, but sometimes a backer was required to deposit his stake. The business of the bookmakers was rival*

(a) Reported by E. MANLEY SMITH, Esq., Barrister-at-Law.

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*and competing, and each one was independent of any other and of the owners of the racecourse.*

*Held, by Lord Esher, M.R., Lindley, Lopes, Smith, and Chitty, L.JJ., Rigby, L.J. dissenting, that this inclosure was not a "place" within the meaning of the Betting Act, 1853.*

*Hawke v. Dunn (18 Cox C. C. 543 ; 76 L. T. Rep. 355 ; (1897) 1 Q. B. 579) disapproved of.*

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for betting—  
Racecourse  
inclosure—  
Betting ring  
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—16 & 17  
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ss. 1, 3.

**T**HIS was an appeal from the judgment of Lord Russell, C.J. at the trial of the action without a jury.

The plaintiff was a shareholder in the defendant company, which was incorporated under the Companies Acts, 1862 to 1879, for the purposes (*inter alia*) of carrying on the business of a racecourse company, and for this purpose was the owner and occupier of an inclosed piece of land known as the Kempton Park Racecourse.

Adjoining this race-course and forming part of it the defendants had fenced off and inclosed by means of iron rails a piece of ground about a quarter of an acre in extent known as the Reserved Inclosure.

This inclosure was uncovered, except that on the far side of it from the racecourse there were tiers of seats covered over with a roof, and this erection formed part of a building known as the grand stand, which adjoined the Reserved Inclosure and other inclosures adjacent to the racecourse.

Any member of the general public, including the persons mentioned in the next paragraph, was admitted by the defendant company to the racecourse on payment of an entrance fee of 1s. on ordinary occasions, and 2s. 6d. on special occasions, and to the Reserved Inclosure on payment of a further fee of the difference between the entrance fee paid and 1l.

The plaintiff alleged that at every race meeting held on this racecourse, and particularly on the 12th and 13th days of March, 1897, the Reserved Inclosure was opened and kept by the defendant company for the purpose of (1) certain persons using the same, that is to say, professional bookmakers betting with persons resorting thereto, and (2) money being received by or on behalf of such persons using the same as deposits on bets made on certain horse races that were then being held on the premises of the defendant company under their direction and control.

Under these circumstances the plaintiff claimed an injunction to restrain the defendant company, its agents and servants, from opening or keeping the Reserved Inclosure for the purpose of persons using the said inclosure using the same for the purposes of (1) betting with persons resorting thereto, or (2) money being received by or on behalf of such persons using the same as deposits made on horse races, and from knowingly and wilfully permitting the said inclosure to be used by such persons for the said purposes or either of them, and from otherwise carrying on

its business in a manner contrary to the provisions of the Betting Houses Act, 1853, and of its memorandum of association, and from expending moneys, the assets of the defendant company, in and about the maintenance and conduct of such illegal business.

The defendant company pleaded that the Reserved Inclosure was not a "place" within the meaning of the Betting Houses Act, 1853.

Pursuant to order the defendant company delivered the following particulars, of the terms, conditions and circumstances on and under which bookmakers frequented the said inclosure, and of the manner and circumstances under which betting was there carried on by the bookmakers :

1. The said inclosure is kept by the defendant company for the purpose of the public being admitted thereto to see the races at meetings held under the management of the defendant company on their said premises, and the public are, on such occasions, admitted thereto, subject to the payments specified in the statement of claim. Each person on making the required payment receives a ticket with the words "Reserved Inclosure" printed thereon. Such ticket entitles the person receiving the same to resort to and frequent the said inclosure till the close of the racing on the day of issue and not further or otherwise, but any such person is liable to be ejected from the said inclosure by the defendant company's servants for improper or illegal conduct. Any person passing out of the inclosure may be re-admitted on the same day, provided that he before leaving obtains a re-admission ticket, and presents the same on re-admission, but not otherwise.

2. The number of persons admitted to the said inclosure on race days varies from 500 to 2000, and among such persons there are always a certain number, varying from 100 to 200 who are professional bookmakers, carrying on their business in manner hereinafter described. The bookmakers are admitted to the inclosure as members of the general public and not otherwise, and on the same terms as to payment, re-admission, and in all other respects, nor do they, in fact, frequent or claim to frequent the inclosure, except on such terms. They are not persons having any rights, interest, or control in or over the inclosure or other premises, the property of the defendant company, nor have they any special rights or privileges therein. Of the other members of the public frequenting the said inclosure, the greater number go there for the purpose of backing horses with the bookmakers, but a certain number do not bet at all.

3. The bookmaker in the inclosure invariably carries on the practice of betting as hereinafter described. He is accompanied by a clerk who sometimes is in partnership with him, and who assists him in his transactions. He does not confine himself to any fixed spot in the inclosure, nor does he use any such apparatus as a desk, stool, umbrella, or tent, though any particular bookmaker is usually to be found in or near the same part of the inclosure. No betting lists are exhibited. On the other hand backers are persons who back particular horses with the bookmakers as hereinafter more particularly mentioned.

4. With a few exceptions, when betting takes place on future events, betting in the inclosure is confined to betting on the races of the day, and no betting commences on any individual race before the names of the horses which are going to run in that race are announced on the telegraph board—usually about a quarter of an hour before the time appointed for that race to be run. Such betting is known as "post betting," and continues, in most cases, till the fall of the flag, when the horses start, and bets are frequently made while the race is being run. "Post betting" is always done at stated prices or odds, that is to say, it may be at stated odds on "the field" (as hereinafter explained), against the horse backed, or at odds on the horse against "the field," or at evens. These prices vary from time to time, as a greater or less extent of money may be forthcoming to back a particular horse or horses. "Post betting," as would appear from the above statement, is not carried on in respect of more than one race at a time. It is confined to the particular race next about to be run or then being run; consequently, as hereinbefore stated, no betting lists are ever exhibited or are required for the purposes of the business.

5. The difference in the method of betting adopted by the bookmakers from that adopted by other members of the general public, who are generally the backers, is as follows: The backer for each bet selects, as a rule, one horse which he desires to

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*Gaming—  
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—16 & 17  
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back against the other horses engaged in the race, which horses in each case, as regards the particular horse backed, are then called “the field,” and he applies to the bookmaker to name the price or odds at which he will back “the field” against such horse. A backer will also at times, where any horse is at the opening of the betting quoted at long odds, back that horse with a view of laying against such horse should it subsequently be quoted at shorter odds, as hereinafter mentioned. On the other hand, the practice of the bookmaker is to back “the field” against each and every horse in the race as far as possible, and to such an extent and amount that in the result, whichever horse wins, the total amount he will, according to his book, be entitled to receive from the backers of the horses that are beaten will be in excess of what he may have to pay the backers of the horse that wins, the difference being the profit on his book. While, therefore, it is the object of the bookmaker to back “the field” against as many horses as possible, he must, to avoid loss, abstain from backing “the field” against any one horse to more than a certain amount—the limit being that his liability in respect of any one horse must be less than what he will be entitled to receive in respect of the other horses.

6. On application by an intending backer of any particular horse, the bookmaker states the price or odds at which he is willing to back “the field” against such horse. If the bet is made it is entered by the bookmaker's clerk in a book, and, in some cases, the backer is called upon to deposit his stake with the bookmaker as is hereinafter more particularly explained. When a bookmaker is anxious or willing to back “the field” against a particular horse, he calls out the odds which he will give or take in respect of such horse, and frequently the odds are so called out many times without a response being received. By so offering to give or take such odds, the bookmaker does not offer to make any bet an indefinite or any number of times, nor does he bind himself to bet with any person who may wish to bet with him and accept the odds so offered. In all cases where there are several horses engaged in the race there are some against which the bookmaker is anxious to back “the field”; consequently, the practice of calling out odds is largely adopted by every bookmaker betting in the inclosure for the purpose of attracting the attention of backers.

7. Backing horses against “the field” is not confined to the backer; nor is backing “the field” against particular horses confined to the bookmaker. When a bookmaker has backed “the field” against a particular horse up to his limit (as hereinbefore stated and explained) he will usually refuse to back “the field” against that horse further. A bookmaker will frequently back horses under the following circumstances: (1) if he has exceeded his limit; (2) if he has laid short odds on the field against a horse which subsequently goes to a longer price; (3) if he has special information that a horse is likely to win. Conversely if a backer has backed a horse at long odds, whether before the meeting or in the inclosure, and the horse goes to a shorter price, he frequently endeavours to back the field against the horse at such shorter price, and if necessary calls out the odds at which he will so back the field in the same manner as is hereinbefore described in the case of the bookmaker.

8. The number of bets made by a bookmaker on each race under the circumstances hereinbefore described is greatly in excess of that made by a backer even though the latter may be systematically backing horses, and one bookmaker makes bets on each race with numerous backers. The businesses of the various bookmakers are rival and competing; and the business of each bookmaker is independent both of that of every other bookmaker and also of the defendant company as owners of the inclosure. No one bookmaker does or could bet in the manner and under the circumstances hereinbefore described with all the persons who resort to the said inclosure or with more than a small fraction of such persons. The defendant company have no knowledge of what persons do and what persons do not act as bookmakers in the said inclosure. No person in the inclosure is admitted with or has any greater or less right to act as a bookmaker than any other person, although in fact and practice the limited number of persons who do act in that capacity collectively form the market for such bets as the rest of the public or the backers wish to make.

9. Some bookmakers carry on a ready-money business in the inclosure, that is, they usually require the backer to deposit his stake in respect of the bet at the time the bet is made. The bet is then entered in the book, and the backer receives a ticket corresponding with the entry so made. Others do the greater part of their business on credit, that is to say, no money is deposited on either side, but they only do business in this way with persons whom they know to be of good credit. Should any person who was unknown to them offer to bet with them they would either decline to bet or require such person to deposit his stake. Saving as aforesaid no money is deposited in respect of bets made or to be made in the inclosure.

10. The foregoing particulars contain a full and accurate account and description of the betting which is carried on not only in the inclosure forming part of the defen-



dant company's premises, but in all racecourse inclosures in which betting takes place. At the time of the passing of the Betting Houses Act, 1853, such inclosures were in like manner frequented by bookmakers, and betting transactions of precisely the same character were therein openly and habitually carried on by them, and had been so carried on since the beginning of the present century. Ever since the passing of the said Act up to the present time bookmakers have openly and habitually continued to carry on a similar kind of betting in such inclosures, and until recently without any suggestion of its being illegal.

At the trial of the action before Lord Russell, C.J. without a jury, the statements in the particulars were admitted by the plaintiff to be true.

The defendants also admitted that in granting access to the inclosure they knew, and in that sense permitted it, that some of the persons who entered the inclosure were professional bookmakers, and that some were members of the public, some of whom betted and some did not. His Lordship held that he was bound by the recent decision of the Queen's Bench Division in *Hawke v. Dunn* (18 Cox C. C. 543; 76 L. T. Rep. 355; (1897) 1 Q. B. 579), and he therefore granted the injunction in the terms in which it was asked, but directed it to lie in the office until the appeal to the Court of Appeal was disposed of.

The defendant company appealed.

By the Betting Act, 1853 (16 & 17 Vict. c. 119), which is intituled an Act for the Suppression of Betting Houses, it is provided as follows :—

Whereas a kind of gaming has of late sprung up tending to the injury and demoralisation of improvident persons by the opening of places called betting houses or offices and the receiving of money in advance by the owners or occupiers of such houses or offices, or by other persons acting on their behalf, on their promises to pay money on events of horse races and the like contingencies: For the suppression whereof be it enacted by, &c. . . . Sect. 1. No house, office, room, or other place shall be opened, kept, or used for the purpose of the owner, occupier, or keeper thereof, or any person using the same, or any person procured or employed by, or acting for or on behalf of such owner, occupier, or keeper, or person using the same, or of any person having the care or management, or in any manner conducting the business thereof, betting with persons resorting thereto; or for the purpose of any money or valuable thing being received by or on behalf of such owner, occupier, keeper, or person as aforesaid, as or for the consideration for any assurance, undertaking, promise, or agreement, express or implied, to pay or give thereafter any money or valuable thing on any event or contingency of or relating to any horse race . . . and every house, office, room, or other place opened, kept, or used for the purposes aforesaid, or any of them, is hereby declared to be a common nuisance and contrary to law.

Sect. 2 provides that any "house, room, office, or place" opened, kept, or used for the purposes aforesaid, shall be taken and deemed to be a common gaming house within the Act of 8 & 9 Vict. c. 109.

Sect. 3 provides for a penalty being inflicted upon any person who being the owner or occupier of any house, office, room, or other place, or a person using the same shall open, keep, or use the same for any purposes aforesaid; and upon any person who being the owner or occupier of any house, room, office, or other place shall knowingly and wilfully permit the same to be opened, kept, or used by any other person for the purposes aforesaid or any of them.

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June 16 and 17.—Sir Frank Lockwood, Q.C. and Joseph Walton, Q.C. (C. W. Mathews and G. Herbert Stutfield with them) for the defendant company.—The reserved inclosure is not a "place" within the expressions "house, office, room, or other place," and "house, room, office, and place," used in the Betting Act, 1853. Neither is the user of the inclosure which was permitted by the defendant company a user such as is mentioned in the Act. According to the usual rule of construction "place" or "other place" should be construed as being something *ejusdem generis* with "house, office, or room." The Act was not passed to put a stop to betting. If that had been the object of the Legislature, it could easily have been expressed in plain language. The object of the Act was shown by its preamble to be the suppression of a particular kind of gaming which in 1853 had "of late" sprung up. Betting on racecourses had existed long before that Act was passed. All the sections of the Act show that this was intended to apply to something in the nature of a house or office, not to an open space such as this inclosure. *Hawke v. Dunn* (18 Cox C. C. 543; 75 L. T. Rep. 355) was wrongly decided and should be overruled. Three of the cases in which something has been held to be a "place" within the Act are distinguishable, viz., *Shaw v. Morley* (19 L. T. Rep. 15; L. Rep. 3 Ex. 137); *Bows v. Fenwick* (30 L. T. Rep. 524; L. Rep. 9 C. P. 339); *Gallaway v. Maries* (45 L. T. Rep. 763; 8 Q. B. Div. 275). In the first of those cases the Court was considering the nature of a wooden structure; in the second, an umbrella fixed in the ground, and in the third, a movable wooden box. In the present case the bookmakers used nothing to indicate where they carried on their business, they moved about in the inclosure, and did not occupy any particular spot. Two other cases, it is submitted were wrong and should be overruled: (*Eastwood v. Miller*, 30 L. T. Rep. 716; L. Rep. 9 Q. B. 440; *Haigh v. The Town Council of Sheffield*, L. Rep. 10 Q. B. 102). They referred also to a Scotch case: (*Henretty v. Hart*, 13 Rettie Court of Justiciary, 4th series, 9).

*Asquith*, Q.C. and *H. S. Cautley* for the plaintiff.—The Act goes far beyond the object given in its preamble, which was in fact repealed by the Statute Law Revision Act, 1892. The preamble only refers to houses and offices, and to owners and occupiers of houses and offices. The enactments refer also to rooms and other places, and to persons using the same. The preamble cannot be relied upon as cutting down the plain words of the enactment. The argument of *ejusdem generis* is not applicable here because the word "other" does not always occur before the word "place" when used after "house, office, or room." The word "place" was purposely used as meaning something larger than a house, office, or room. This inclosure is a spot capable of being used by a person carrying on the business of a bookmaker for the purposes of that business, and inviting persons to resort thereto for the purposes of that busi-

ness. That is enough to make it a "place" within the Act. Every case must depend on its own circumstances. This inclosure was such that anyone wishing to bet with a particular bookmaker would have no difficulty in finding him, and it is a fact to be considered that the bookmakers have a habit of keeping to the same spot in the inclosure for the greater convenience of carrying on their business. If the inclosure was covered it would be a room. The fact of its not having a roof on it could make no difference. If the Court were to overrule *Hawke v. Dunn* (*ubi sup.*), as it was asked to do by the defendants, it would also have to overrule a very large mass of judicial opinion in many earlier cases. It is submitted that the word "place" in this Act means a place capable of being physically occupied and kept by a single person, and of being used for the purpose of betting by a person carrying on a business of betting who can reasonably expect persons wishing to bet with him to find him there. It must be a place capable of being resorted to by persons with the reasonable expectation of finding there the bookmaker they want. That will exclude any such large area as a racecourse, which may contain several thousand people. The grand stand must be a "house" within the meaning of the Act, and since "house" must include its curtilage, this inclosure should be considered as the curtilage of the grand stand and therefore within the Act. Besides the cases cited by the appellants, they referred also to *Liddell v. Lofthouse* (74 L. T. Rep. 139; (1896) 1 Q. B. 295); *Doggett v. Catterns* (12 L. T. Rep. 355; 17 C. B. N. S. 669; 19 C. B. N. S. 765); *Reg. v. Preedy* (17 Cox, 433).

*Walton*, Q.C. in reply.—The logical result of the plaintiff's contention is that no one can make a bet with persons resorting to the place where he is, without making it a gaming house. If his contention be correct the words "house, office, or room" are unnecessary, and no meaning is given to them. "Place" must mean one capable of being kept and used as a betting establishment, and used for that purpose.

*Cur. adv. vult.*

*July 5.*—Lord ESHER, M.R. read the following judgment;—This is an appeal from a *pro formâ* decision of the Lord Chief Justice in a case tried before him without a jury. The action was brought against the Kempton Park Racecourse Company by an alleged shareholder in it asking for an injunction against the company to forbid them from continuing "knowingly and wilfully to permit certain persons to use a certain inclosure belonging to the company illegally within the meaning of the statute 16 & 17 Vict. c. 119." The facts are to be collected from admissions made in writing and verbally at the trial before the Lord Chief Justice, and in certain particulars given between the parties before the trial, and used as evidence at the trial and treated as true in fact and undisputed. As to these particulars, Mr. Asquith, who argued the plaintiff's case as well and

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earnestly as it could be, said in opening the case before the Lord Chief Justice: "I am instructed that, after a very careful investigation, the facts stated in the particulars may be assumed to be correctly stated." It has been suggested to me that the facts stated in the tenth particular as to the former usage on racecourses is not correct. I think it is impossible for the Court of Appeal properly to adopt any such suggestion, and I venture to say, that I am convinced that the statement is absolutely correct. From the sources I have named the facts of the case were ascertained to be as follows:—The company are the owners of the Kempton Park Racecourse, and of certain stands and inclosures on the racecourse. There are several stands, and each stand has an inclosure in front of it open to the stand but railed off from the rest of the racecourse by iron railings. One of these inclosures is known as the Reserved Inclosure. Admission is given to that inclosure and its stand to anyone who applies and makes a payment of 1*l.* for and in respect of such admission. Every person so admitted is entitled to walk and stand in the inclosure and in every part of it, and to sit in the stands. No part of the inclosure or stand can be or is reserved by anyone for his own use when not actually there. Many persons pay for admission to such inclosure and stand upon such terms, and amongst them are many professional betting men called bookmakers, who pay the same amount as others for their admission, and who are admitted on the same terms as the others. The bookmakers when in the inclosure shout out the odds they are prepared to bet against each and every horse in a race, and for a certain time they bet such odds with everyone who desires to bet, and who is ready, if required, to deposit with the bookmaker the amount which he bets against the bookmaker, so that the bookmaker, in case the horse against which he bets does not win, keeps the money he took on deposit, but if the horse does win he undertakes to pay the odds he bets against the horse. The bookmaker goes to the races and into the inclosure for the purpose of betting in the way described with everyone who will bet with him. The bookmaker bets as a matter of business. To bet in the way described is his business. The businesses of the various bookmakers are as against each other rival and competing, and the business of each bookmaker is independent of that of every other bookmaker. No one of them assumes to exercise or does exercise any manner of exclusive use of any part of the inclosure, but walks or stands in the inclosure and every part of it in the same manner and on the same terms as every other person in the inclosure. The description above given of the betting carried on at Kempton races is a full and accurate account and description of the betting which is carried on not only at Kempton races in the Reserved Inclosure, but in all racecourse inclosures in which betting takes place. At the time of the passing of the Betting Act, 1853, such inclosures were in like manner frequented by

bookmakers, and betting transactions of precisely the same character were therein openly and habitually carried on by them, and had been so carried on since the beginning of the present century. It is upon these facts that the plaintiff on the record asks for the injunction he claims against the defendants. He insists that upon these facts the judge who tried the case ought to have found that the company, the owners of the Reserved Inclosure, did knowingly and wilfully permit the inclosure to be used by persons other than the company—namely, the bookmaker—in a manner made illegal by the statute 16 & 17 Vict. c. 119. It is impossible to say that the company opened, kept, or used the inclosure for the purpose of the company betting with persons resorting thereto. It is impossible to say that the bookmakers or any bookmaker opened or kept the inclosure at all. The question must be whether the bookmakers or some one was or were permitted to use and did use the inclosure illegally within the meaning of and contrary to the statute. The proposition raises three questions: First, is such an inclosure such a place as can come within the meaning of the statute? Secondly, if yes, was the inclosure so used by anybody as to make the inclosure or any part of it a place illegally used, within the meaning of the statute? Thirdly, if it was used illegally, was such use knowingly and wilfully permitted by the company? If all these three propositions are to be answered against the company, the injunction ought to be granted. If any one of them is answered in favour of the company, the injunction ought not to be granted. In this case it is clear that the company must have known what was habitually done in the inclosure. If then, what was done was illegal, the third proposition must be answered against the company. If what was done was not illegal, the third proposition must be answered in favour of the company. They cannot be said to have permitted what did not exist. This reduces the discussion to the first and second propositions. In order to determine the first and second propositions and their importance, it is necessary in the first place to determine what is the true construction of the statute. In order to construe the statute the Court is bound to consider the condition of things existing immediately before and at the time of the passing of the statute which are dealt with by the statute. The Court is bound in this case to consider, amongst other things, the things stated in the tenth particular. The statute commences with a preamble, which, in my opinion, is not repealed: "Whereas a kind of gaming has of late sprung up by the opening of places called betting houses or offices, and the receiving of money in advance by the owners or occupiers of such houses or offices," &c. The mischief described is not gaming by betting nor gaming by receiving money in advance, but by such betting being brought about or rendered more easy by the opening of places called betting

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houses or offices. It is not betting, whatever may be its kind, which, independent of locality, is struck at, but it is the providing of a locality for particular kinds of betting which is the mischief to be dealt with. Then the enacting parts of the statute commence thus: “For the suppression thereof be it enacted,” &c. “Thereof” does not mean “for the suppression of betting”; it refers to the recited mischief of betting in the new manner of betting, that is, by the manner of opening of places called betting houses or offices which is a manner which brings about betting or makes it more easy for many to bet. Then the enactment proceeds, and the description of the locality is enlarged beyond the description of it in the preamble. It describes not only a place called a betting house or office, but says, “No house, office, room, or other place shall be opened, kept or used.” Still it is a kind of locality which can be “opened, kept, or used.” And in sect. 2 this locality, called a house, room, or place, is one which can be taken and deemed to be a common gaming house, in which persons not gaming may be found; into which the police may force entrance by breaking into it; and in which they may arrest and search people found in it, though those persons are in it without any purpose of gaming at all. Taking into account the mischief indicated in the preamble, and the description of the locality in the enacting part of the statute, the locality being a necessary part of the offence, and the word “place” being indefinite, and so indefinitely large that it must have some limitation, I can see no reason why the rule of construction as to the interpretation of general words in a statute following particular or more limited words should not be applied. That rule requires an interpretation of the general words limiting them to matters or things of the same kind as to the mischief being dealt with, as the previous words; but an interpretation as wide as the limitation just described will admit. Applying this rule of interpretation to the present statute, it seems to me that the place must be a place used for betting, which can for the purpose of betting be not unreasonably deemed to be a place of the same kind as a house, office, or room used for the purpose of betting. It need not be a building built like a house, room, or office; it need not be a covered place; it need not be railed off or boarded off, so as to prevent physical access to it except through a particular part of the railing or boarding; but it must be a defined space, capable from its condition of being used by a person who desires so to use it as if it were his house, room, or office, used by him as such for his betting business. I think that the Reserved Inclosure described and existing in this case was, in consequence of its structural condition, a defined space, capable of being used by a person desirous of so using it as if it were his house, room, or office, used as such for his betting business. Then arises the second question, whether any person did so use the inclosure as to enable the Court to say that he used it as if it were his house, office, or room, used by him as such for his



betting business. Now, there are and must be some essential rights of a person using a place as his house, his office, or his room, different from the rights as to it of persons who are not using it as their house, office, or room. He must have some right of user peculiar to himself, and exclusive of their rights, if any. A man cannot be said to be using a room as his room or office if, when he comes to it, he finds it full of people, even if they have come to see him or to deal with him, and yet he has no right to say, "Make way or room for me to come into my room or office." A man cannot be said to be using a table as his table if any person who can find room at the table has as much right as he has to come to it and use it in any way such person thinks fit. The user by a person of a place as if it were his room or office necessarily implies some exclusive right in him as against some other persons. He may have partners in the room, or he may use part of the room as his office, whilst others have an independent right to use another part of the room as their office; but the part of the room or place which can be said in any reasonable sense to be used by him as his office must be a part which he claims to use and does use exclusively as his against some people. Applying that rule to the inclosure in question, the facts seem to me to show that no one of the bookmakers described in the evidence does claim to use and does use any part of the inclosure as his part of it exclusively as against any one. To say that he uses or claims to use the spot of ground on which he is at the moment standing as his room, office, or place exclusively as against all the world, as if it were his room or office, is beyond all reason. So long, therefore, as an inclosure on a racecourse is used only as this inclosure was used, it cannot, in my opinion, be said to be a place used contrary to the prohibitions or subject to the penalties imposed by the statute. If an inclosure on a racecourse or elsewhere is used only as this inclosure was, no one can properly hold that the inclosure is being illegally used as contrary to the statute. As matter of law, there is no legal evidence to bring it within the statute. If any other circumstance is added and relied upon in any other case, the whole case must then be considered subject to the rule I have laid down. It follows that I do not agree with the interpretation put upon the statute or the application made of it to the facts in the case of *Hawke v. Dunn* (18 Cox C. C. 543; 76 L. T. Rep. 355). It seems to me that the learned judges in that case did not rightly determine what kind of user of the place will bring it within the prohibition of the statute. Their judgment is open to this criticism, that, according to it, if a bookmaker makes what the judgment calls a ready-money bet in a place which it is possible to use so as to make it a prohibited place within the statute, the mere fact of his doing so makes it a prohibited place. And it seems to me that this conclusion is founded on the view mentioned in 76 L. T. Rep. 356; and (1897) 1 Q. B. p. 583, that one of the practices deemed to be objectionable was the

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practice of ready-money betting, wherever such betting was made, without reference to the locality in which such bet was made. With that view I cannot, as I have said, agree. I may repeat that, in my opinion, the mischief aimed at was not gaming by betting nor gaming by receiving money in advance, but by such betting being brought about or rendered more easy by the opening, or keeping, or using a place for the purpose of making, as a matter of business, such bets. The other cases which have been cited before us must be considered, if this judgment of mine is correct, as instances to which the rule now laid down must be applied. I cannot undertake by ingenuity to explain any of them away. I think that my present view of the statute is what I substantially stated, though not so elaborately, in *Bows v. Fenwick* (30 L. T. Rep. 524; L. Rep. 9 C. P. 339). Whether the statute was in that case rightly applied to what was called an umbrella may be doubtful. If the thing was really a tent I should think the decision right; if the thing was really an ordinary umbrella I think the decision was wrong. In *Snow v. Hill* (52 L. T. Rep. 859; 14 Q. B. Div. 588), I think that Smith, L.J. took the same view of the statute as I had done in *Bows v. Fenwick* (*ubi sup.*), and do now. I think that the case of *Gallaway v. Maries* (45 L. T. Rep. 763; 8 Q. B. Div. 275)—the case of a betting-man standing on a stool to bet—was, with deference, wrongly decided. I must say that I think *Eastwood v. Miller* (30 L. T. Rep. 716; L. Rep. 9 Q. B. 440) was wrong. The defendant occupied the field, and charged people for entering it; but I cannot see that he used it for the purpose of betting himself at all. I am of opinion that this appeal should be allowed.

LINDLEY, L.J. read the following judgment:—This action is brought by a shareholder of a company to restrain it from carrying on its business in a manner alleged by the plaintiff to be illegal, viz., contrary to the provisions of what is now shortly called the Betting Houses Act, 1853 (16 & 17 Vict. c. 119). An injunction has been granted by the Lord Chief Justice, on the authority of *Hawke v. Dunn* (18 Cox C. C. 543; 76 L. T. Rep. 355)—a considered and unanimous decision of a Divisional Court, and which the Lord Chief Justice considered himself compelled to follow. No objection was taken before him nor before us that the Court had no jurisdiction to grant an injunction to restrain the commission of what is a criminal offence if the plaintiff is right. It has been assumed, and perhaps rightly, that the Court has jurisdiction to protect the shareholders of a company from a misapplication by the company of its property, although such misapplication may be punishable as a criminal offence. I shall also assume such jurisdiction, and leave this point open for decision when raised and insisted on. The present case was decided on admitted facts, and one of these facts—viz., what was common practice in 1853—is very important. The particulars describe in detail the inclosure complained of and the use made of it, and in the tenth particular it is stated that "at the time of

the passing of the Betting Houses Act, 1853, such inclosures were in like manner frequented by bookmakers, and betting transactions of precisely the same character were therein openly and habitually carried on by them, and had been so carried on since the beginning of the present century." I presume that this statement could be proved, if not admitted, and that it is admitted simply to save the expense of formal proof. With these preliminary observations I proceed to consider the statute on which the case really turns. The title (if part of the Act), the preamble, and the first twelve sections are all material; the other sections throw no light on them. An examination of the statute from its commencement to the end of sect. 12 shows—(1) that the object of the Legislature was, if possible, to suppress a kind of gaming which had then lately (in 1853) sprung up, and which is described in the preamble; (2) that, in order to attain this object, betting houses and other places are prohibited, and are declared to be common nuisances and to be gaming houses within 8 & 9 Vict. c. 109, sects. 1 and 2; (3) that penalties are imposed on those who keep such places and those who in any way advertise them (sects. 3, 4, and 7); (4) that places suspected of being such as are prohibited may be broken into and persons in them may be arrested, and all documents found therein and relating to racing or betting may be seized (sects. 11 and 12). The Act, in short, is aimed at betting houses and those who keep them; it is not aimed at betting anywhere nor at persons who go to betting houses to bet with those who keep them. The language of sects. 1 and 3, in some respects, goes much further than that of the preamble, and, when clear and unambiguous, effect must be given to the wider language of the enacting sections. For example, the preamble mentions only "the opening of places called betting houses or offices and the receipt of money in advance by the owners or occupiers of such houses and offices or by other persons acting on their behalf"; while sect. 1 plainly prohibits not only the opening but the keeping and using of such places and betting with persons resorting thereto, whether they pay money in advance or not. The language of the prohibition being in these respects plain and unambiguous, it cannot be properly restricted by the language of the preamble. But when it becomes necessary to ascertain what sort of places other than betting houses, rooms, or offices were aimed at, there is much more difficulty. No person can bet except in some place or other, and whenever he bets in any place he uses that place for betting. To construe "other place" or "place" in its ordinary sense of any and every place where persons can or do bet would involve an absolute prohibition of betting, and would have rendered it quite unnecessary to specify betting houses, rooms, or offices. But the Legislature clearly did not intend to prohibit and have not prohibited all betting, nor even all betting by persons who deposit their stakes. Some limitation must, therefore, be put on the expression "other place" or "place," and the real difficulty

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is to discover, first, what sort of place is prohibited; and, secondly, to determine whether the inclosure with which we have to deal on the present occasion is such a place. The language of the Act itself indicates what sort of place was aimed at by the Legislature, although no definition of the word “place” is to be found in the Act. The places aimed at are described as “places called betting houses or offices” (see the preamble); they are referred to as “house, office, room, or other place” (sect. 1); as some place to which persons do or can resort for betting (sect. 1); as some place where the business of betting is carried on (sects. 1, 3, and 4); as some place used as a betting house or office, and which can be forcibly entered under a magistrate’s order or an order of the Commissioners of Police (sects. 11, 12); as some place which can be advertised as a betting place (sect. 7); as some place which can be reasonably regarded as a common nuisance (sect. 1); and which it is not absurd to treat as a gaming house within 8 & 9 Vict. c. 109 (sect. 2). The sort of place aimed at can be gathered, though not very distinctly, from the language then used; and it appears to me reasonably clear that a betting house or office is the type of place which the Legislature had in view; and that no place is within the Act which is so unlike a betting house or office as not to resemble it otherwise than by being a place where some persons sometimes bet or even go to bet. I cannot bring myself to think that a place which is so unlike a betting house or office as an ordinary English racecourse is within the Act at all. This was the view taken by the Scotch Court in *Henretty v. Hart* (13 Rettie, Court of Justiciary Cases, 4th series, p. 9), cited by Mr. Walton. On the other hand, there may be betting houses or offices or other places of that sort on a heath or anywhere where people congregate to see a race or any other exhibition. There may be a betting booth, or inclosure, or ring, or place, not easy to describe by any appropriate name, which sufficiently conforms to the type of a betting house or office as to be hit by the Act; and I am not prepared to say that the cases of *Shaw v. Morley* (19 L. T. Rep. 15; L. Rep. 3 Ex. 137), *Bows v. Fenwick* (30 L. T. Rep. 524; L. Rep. 9 C. P. 339), and *Gallaway v. Maries* (45 L. T. Rep. 763; 8 Q. B. Div. 275) were decided on any erroneous principle. The desk, the stool, and umbrella, and the wooden box which had to be considered in those cases were held to conform to the type of a betting office and to be prohibited accordingly. These cases seem to me to go to the very verge of the law in the application of the principle on which they were decided. *Doggett v. Catterns* (12 L. T. Rep. 355; 17 C. B. N. S. 669; 19 C. B. N. S. 765) turned on sects. 4 and 5 of the statute, and the actual decision does not assist us. There was so much difference of opinion about the meaning of a “place” that the case is a very unreliable guide on that head. *Eastwood v. Miller* (30 L. T. Rep. 716; L. Rep. 9 Q. B. 440) and *Haigh v. Town Council of*

*Sheffield* (L. Rep. 10 Q. B. 102) are the only other cases prior to *Hawke v. Dunn* (18 Cox C. C. 543; 76 L. T. Rep. 355) which I think it necessary to notice. Both were cases stated by magistrates who found that the grounds then in question were places within the Act. The Court, therefore, had only to say whether there was evidence to justify such a finding, and the Court decided that there was. The Court came to the conclusion that it could not say, as a matter of law, that the magistrates were wrong. But bearing this in mind, *Eastwood v. Miller* (*ubi sup.*) seems to have been merely a case of betting at a pigeon match and went too far. In *Haigh v. Town Council of Sheffield* (*ubi sup.*) there were several circumstances to justify the finding of the magistrates, viz., the connection of the grounds with the house, the desks, and stools, and clerks, which, if inside the house instead of outside, would have made the case an easy one. It would have been going too far to say that there was no evidence there to support the finding of the magistrates. Having pointed out to the best of my ability what sort of betting place is prohibited, I pass on to consider whether the reserved inclosure with which we have to deal is the kind of place aimed at by the Legislature. It is a place where anyone can go who chooses to pay 1*l.*; where bookmakers and others resort for betting purposes; where bets are made for money deposited as well as on credit; where many persons go without betting or intending to bet, but simply to see the race and their friends and acquaintances. The place does not, in my judgment, come up to the type of a betting house or office such as the Legislature has prohibited. This conclusion is, in my opinion, strengthened by the preamble and by the statement as to the long existence and use of such inclosures as these before 1853. Having regard to this statement and to the preamble and to the ambiguity of the word "place" in the enacting clauses, I am unable to construe the Act as aimed at or as including such an inclosure as this is. This conclusion is further strengthened by the fact that such inclosures so used were not supposed to be illegal until the last two or three years. As regards the case of *Hawke v. Dunn* (18 Cox C. C. 543; 76 L. T. Rep. 355), I am of opinion that it was wrongly decided, and that sufficient attention was not paid to the type of place which the Legislature was aiming at. The decision can, in my judgment, only be supported by treating the Act as an Act for the suppression of betting in a particular description of place. The appeal ought to be allowed, and judgment entered for the defendant.

LOPES, L.J. read the following judgment:—The plaintiff claims an injunction against the defendant company to restrain them from using or knowingly permitting to be used a certain inclosure at Kempton Park, known as the "Reserved Inclosure," for betting purposes and from carrying on their business in a manner contrary to the provisions of the Betting Houses Act, 1853, and contrary to their memorandum of association and

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THE KEMPTON  
PARK RACE-  
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—  
1897.

Gaming—  
Place used  
for betting—  
Racecourse  
inclosure—  
Betting ring  
—"House,  
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—16 & 17  
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from expending the assets of the company in and about the conduct of such illegal business. The case was heard before the Lord Chief Justice, and he granted the injunction, acting upon the recent decision in *Hawke v. Dunn* (18 Cox C. C. 543; 76 L. T. Rep. 355). The use of the inclosure for the purposes alleged, and the knowledge of the defendants that it was so used was admitted, but it was contended that the inclosure was not a place within the meaning of the statute. The inclosure in question is uncovered, and is about a quarter of an acre in extent. The public are admitted indiscriminately to this inclosure on making the required payment, some are professional bookmakers, some others go there for the purpose of backing horses with the professional bookmaker, and others go there who do not bet at all. The bookmakers go there as a portion of the general public, and on the same terms in all respects. They have no special rights, privileges, or control beyond those possessed by the general public who frequent the inclosure. The bookmaker does not confine himself to any fixed spot in the inclosure, nor does he use anything brought on, or fixed to, the soil, such as a desk, stool, umbrella, or box, but is generally to be found in or near to the same part of the inclosure. No betting lists are exhibited. Is this inclosure “a place” within the meaning of the Betting Houses Act, 1853? Betting *per se* is not illegal, and is only made illegal by the Act of 1853 if carried on in prohibited places. The Act of 1853 is a penal statute, and must be construed strictly, by which I mean that the Court in construing such a statute must see that the thing charged is an offence within the plain meaning of the words used so as to carry out the true intention of the Legislature. I accept the statement, and have no doubt of its accuracy, viz., that at the time of the passing of the Act of 1853, betting of the same character as that complained of in this case had for many years previously been habitually and notoriously carried on on racecourses and in inclosures on racecourses, and has since that time been so carried on until quite recently without any suggestion of its being illegal. I now approach the Act of 1853. It is called “An Act for the suppression of betting houses.” The title, it is true, is no part of the Act, but, as was said by Jessel, M.R. in *Sutton v. Sutton* (48 L. T. Rep. 95; 22 Ch. Div. 513), it is always on the roll, and may be looked at in order to remove any ambiguity in the words of the Act. It cannot be used to control the express provisions of an Act, yet, if there be in these provisions anything admitting of a doubt, the title of the Act is a matter proper to be considered, in order to assist in the interpretation of the Act, and thereby to give to the doubtful language in the body of the Act a meaning consistent, rather than at variance, with the clear title of the Act. Applying the rule to the present case, it is not too much to say that it shows that the word “place” or “other place” was intended to have a restricted or limited meaning, otherwise the title of the Act might have



been "An Act for the suppression of betting places." Again, look at the preamble: "Whereas a kind of gaming has of late sprung up tending to the injury and demoralisation of improvident persons by the opening of places called betting houses or offices and the receiving of money in advance by the owners or occupiers of such houses or offices, or by other persons acting on their behalf, on their promises to pay money on events of horse races and the like contingencies." The only places mentioned are betting houses and offices, and the demoralisation is said to be caused by a kind of gaming "of late sprung up." There is no mention of racecourses, though horse races are evidently in the mind of the Legislature. Betting on racecourses and in inclosures on racecourses had existed for years, and could not be said to be a kind of gaming "of late sprung up." On the other hand, betting in betting houses was new, and was in 1853 regarded as an evil to be remedied. The rule is that when the words of the enactment are clear the preamble is to be disregarded, but when the words are equivocal, effect is to be given to it to the extent that it shows what the Legislature are intending, and if general language is used in the enactment which it is clear must have been intended to have some limitation put upon it, the preamble may be used to indicate to what particular instances the enactment is intended to apply. It cannot be said that "place" or "other place" was intended to include all places. If so, it would amount to this, that the Act was passed to suppress betting; for no person, so far as I know, can bet without occupying a place, if it is only the place on which he is at the time standing, and if he bets he uses that place for betting. Both the title and the preamble of the Act indicate some limitation to be put on the word "place" or "other place." But what limitation? That is to be gathered from the words used in the first four sections of the Act; "house, office, room, or other place" and "house, room, office, or place." Surely the doctrine of *noscitur a sociis* or *ejusdem generis* is applicable here. That doctrine may be thus expressed, viz., when there are general words following particular and specific words, the general words must be confined to things of the same kind as those specified. A good illustration of what I mean is the case of *Powell v. Boraston* (11 L. T. Rep. 734; 18 C.B.N. S. 175) where it was held that "other building," to qualify for the Parliamentary franchise under sect. 27 of the Reform Act, 1832, must be something substantial, and *ejusdem generis* with the preceding words, "house, warehouse, counting-house, shop." I cannot hold that an open racecourse, or open inclosure on a racecourse, is *ejusdem generis* with "house, office, or room," the inclosure being one where there is no structure of any kind, nothing brought upon, or fixed into the soil, and no appropriation of any fixed spot, and to which the public are indiscriminately admitted. But if we further examine the statute, we shall find further indication that this statute was never intended to apply

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to racecourses or inclosures on racecourses, used for betting. By sect. 2 the place struck at is to be deemed to be a common gaming house within the Act of 8 & 9 Vict. c. 109. How could an inclosure on a racecourse by any stretch of the imagination be deemed to be a gaming house? Sect. 7 again, does not seem applicable to an inclosure on a racecourse, but rather to something like a house, office, or room which can be advertised. Then again sect. 11 authorising police-constables to enter by force "whether by breaking open doors or otherwise," and to search, and to "seize all lists, cards, or other documents relating to racing or betting found in such house or premises," points rather to betting houses or places resembling a house, office, or room, rather than an open inclosure on a racecourse. Sect. 12 is very significant. It enables a commissioner of police to authorise any superintendent of police to enter any "house, office, room, or place," if he suspects that such "house, office, room, or place" is kept or used as what? as a "betting house or office." How could this inclosure be used as a betting house or office? I cannot think that a place so unlike a house, office, or room as this inclosure, can have been contemplated by the Act. If this inclosure is within the Act, why not the whole racecourse? Why not any place where a man stands and bets? So to hold would be equivalent to holding that betting anywhere and everywhere is illegal, and would make it difficult to understand why the Act of Parliament specified any places. The Act was intended to strike at betting houses, or something resembling a betting house where betting was carried on, but was not intended to interfere with betting on racecourses such as had been carried on for very many years before the passing of the Act. If the contention of the respondent is correct, the Act of 1853 should have been intitled an Act, not for the suppression of betting houses, but for the suppression of betting. In my judgment *Hawke v. Dunn*, (76 L. T. Rep. 355; (1897) 1 Q. B. 579) was wrongly decided. That case has carried the law further than any of the previous cases and cannot be supported. I think it unnecessary to refer at any length to the previous authorities. They are all distinguishable from the present case. The cases most relied upon by the respondent were the cases of a desk, stool, umbrella, and box placed upon, or fixed in, the *locus in quo*. I do not believe that in any of these cases a conviction would have taken place if the desk, stool, umbrella, or box had not been present, and the Court had been asked to hold the *locus in quo* prohibited under the Act without such accessories. There is no desk, stool, umbrella, or box in this inclosure, and, as I have said before, nothing that can be said to have any resemblance to a house, office, or room used for betting. Whether the construction of the statute was not somewhat strained in those cases to which I have just referred it is unnecessary for the purposes of this case to decide. In *Gallaway v. Maries* (45 L. T. Rep. 763; 8 Q. B. Div. 275),

which was heard by Grove, J., and myself, and which was the box case, I felt great hesitation in holding that a wooden box such as described could be a "place" within the meaning of the Act, but I considered that I was bound by previous decisions. Each case must depend on its own particular circumstances, and it is not difficult to imagine something placed on a racecourse, which without being a house, office, or room, would so resemble them and so partake of their nature, when used for betting purposes, as to come within the meaning of the Act. I do not attempt to define what is a "place." All I say is, and that I say without hesitation, that this inclosure is not a "place" within the meaning of this Act of Parliament. No point has been made that an injunction will not lie to restrain the commission of a criminal offence. I believe that it will lie when its object is to protect the shareholders of a company from any misapplication of its property, although such application may be punishable as a criminal offence. I think, therefore, that the appeal should be allowed.

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SMITH, L.J. read the following judgment:—This action is brought to review in a Court of Appeal a judgment given in the Queen's Bench Division in the case of *Hawke v. Dunn* (76 L. T. Rep. 355; (1897) 1 Q. B. 579), and the real question to be determined, disregarding the form in which the action is brought, is, whether a professional bookmaker who carries on his business in the accustomed manner, moving about in an inclosure at a race meeting, betting with those of the public who are desirous of betting with him, sins against the provisions of the Act of 1853 (16 & 17 Vict. c. 119), intituled "An Act for the Suppression of Betting Houses." If such bookmaker sins against the Act, so do all owners of racecourses who knowingly and wilfully permit such bookmaker to carry on his calling in the inclosures thereat; and each, whether bookmaker or owner of a racecourse, is liable to fine or imprisonment, with or without hard labour, for a term not exceeding six calendar months; and every person who may happen to be within the inclosure when a professional bookmaker is there plying his calling is liable to be arrested and searched and taken before a justice of the peace. Although the Statute Law Revision Act, 1892, (55 & 56 Vict. c. 19) in one particular deals with this Act of 1853, as also does the Short Titles Act, 1892 (55 Vict. c. 10), they are wholly immaterial to the present case; and the Act of 1853 must be construed as if those Acts had not been passed and the question had arisen shortly after the Royal assent had been given to the Act of 1853 upon the 20th day of August of that year. Before I turn to this Act (upon the true construction of which the decision of this case entirely depends), I must point out that, prior to its passing, all kinds of betting, whether by professional bookmakers or by the public, were perfectly legal, no matter where the bets were made, or whether made upon credit, or by the payment of money by way of deposit on bets, which is called "ready-money

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betting." In the year 1845 the Legislature had enacted (8 & 9 Vict. c. 109, s. 18) that all contracts or agreements by way of gaming or wagering should thereafter be null and void, and incapable of being enforced in any Court of law or equity; so that bets, after the passing of the Act of 1845, won upon horse races or other events, became mere debts of honour, incapable of being enforced, but the bet itself or betting in general, whether upon credit or by way of ready money, wherever carried on, was in no way made illegal, the only disability attaching thereto being that money won by betting could not be recovered if the loser did not choose to pay. Thus far the Legislature had gone, and so matters stood at the time when the Act for the suppression of betting houses came to be passed in 1853. The material facts of this case, and which are admitted to be correct, are as follows: At Kempton Park racecourse there is a piece of ground of about a quarter of an acre in extent, known as the Reserved Inclosure, which is inclosed by iron rails. Persons are admitted to this inclosure on race days, varying in number from 500 to 2000, amongst whom there are always professional bookmakers, varying from 100 to 200 in number. These bookmakers are admitted to this inclosure as members of the general public and upon the same terms, both as to payment and re-admission. These bookmakers have no rights, interest, or control in or over the inclosure, nor have they any special rights or privileges therein. Each bookmaker is accompanied by a clerk. The bookmakers do not confine themselves to any fixed spot in the inclosure, nor do they use any such apparatus as a desk, stool, umbrella, or tent, though any particular bookmaker is usually to be found in or near the same spot of the inclosure. In this inclosure these bookmakers carry on their business in competition with each other, betting with those of the public who are within the inclosure and who may be desirous of betting with them, whether upon credit or by way of ready-money betting. It is also admitted to be the fact that, from the commencement of the present century—that is, for at least half a century before the passing of the Betting Act, 1853, and down to the present time—inclosures at race meetings similar to that at Kempton Park have been frequented by bookmakers, who have therein openly and habitually carried on betting transactions of precisely the same character as those carried on by the bookmakers in the present case, that is, upon credit and by way of ready money; and that, until recently, there had been no suggestion that such betting was illegal. These being the facts of the case, I come to the question, what kind of betting has the Act of 1853 for the first time made illegal. It cannot be said that it has made betting upon horse racing or other events *per se* illegal, for it has done nothing of the kind, and when I turn to the preamble of the Act, which in my opinion must first be read, there is no obscurity as to what the Legislature aimed at when it passed the Act in

question. The preamble recites: "Whereas a kind of gaming has of late sprung up tending to the injury and demoralisation of improvident persons by the opening of places called betting houses or offices, and the receiving of money in advance by owners or occupiers of such houses or offices, or by other persons acting on their behalf, on their promises to pay money on events of horse races and the like contingencies; for the suppression thereof be it enacted." I pause here to see whether in this part of the Act (and which be it remembered, is the part in which the Legislature has declared the object it had in view in passing the Act) it can be said that the business of a professional bookmaker, when carried on by him in an inclosure at a race meeting in the ordinary way in the circumstances above stated, was aimed at by the Legislature, and was the mischief it intended to put down. Assuredly it cannot be so said. First of all, the business of a professional bookmaker at a race meeting, whether on credit or for ready money, was not "a kind of gaming" which had "of late sprung up." It was as old as the present century. Secondly, bookmakers at a race meeting ordinarily "open" no "places called betting houses or offices" or anything equivalent to them, nor as "owners or occupiers of such houses or offices" do they receive money in advance. Thirdly, it will be noticed that this then well-known business of a professional bookmaker at race meetings is not mentioned in this preamble, and it will not be found alluded to throughout the Act. It appears to me when this part of the Act is considered, that the then well-known business of professional bookmakers at race meetings was not only not aimed at by the Legislature but was purposely omitted. If the object of the Legislature was to bring within the meshes of the Act the accustomed business of professional bookmakers at race meetings—a business which for upwards of half a century had been notoriously carried on thereat throughout the kingdom, it is inconceivable that the preamble should have confined (and, as I think, studiously confined) the declared object of the Act to a kind of gaming which had then of late sprung up by the opening of places called betting houses or offices, and the receipt of money in advance by the owners and occupiers thereof. Moreover, it appears to me to be out of all reason to think that this Act for the suppression of betting houses and offices was aimed at the owners of racecourses who permitted their inclosures to be used in the well-known and accustomed manner. Mr. Asquith, in a very excellent argument for the respondent, sought to get rid of the effect of this preamble by making his point upon a later part of the Act, which I have hereafter to deal with. Now, what effect has the preamble of an Act of Parliament when the Act has to be construed? I do not doubt that, if the words of the enacting part of an Act of Parliament are clear and unambiguous they must be construed according to their ordinary meaning, even although by so doing the Act is extended beyond what is shown

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to be its object by its preamble. But the preamble must always play an important part in the construction of a statute. In *Stowell v. Zouch* (Plowden, 369) Dyer, C.J. calls the preamble of a statute, "a key to open the minds of the makers of the Act, and the mischief which they intended to redress." Lord Coke said: "The rehearsal or preamble of the statute is a good means to find out the meaning of the statute, and, as it were, a key to open the understanding thereof" (Co. Litt. 79a, and 4th Inst. 300). Lord Tenterden, when delivering the considered judgment of the Court of King's Bench in the year 1830, in *Halton v. Cove* (1 B. & Ad. 538, at p. 558) thus sums up the matter: "It is very true, as was argued for the plaintiff, that the enacting words of an Act of Parliament are not always to be limited by the words of the preamble, but must in many instances go beyond it. Yet, on a sound construction of every Act of Parliament, I take it the words in the enacting part must be confined to that which is the plain object and general intention of the Legislature in passing the Act, and that the preamble affords a very good clue to discover what that object was." Mr. Asquith's contention is that the enacting parts of the Act of 1853 are such that they clearly extend the Act beyond the limited objects declared in its preamble, and that bookmakers carrying on their business within inclosures at race meetings in the ordinary way are within the enacting parts of the Act, notwithstanding its preamble. He must admit, if this be so, that owners of racecourses who knowingly and wilfully permit such business to be carried on within their inclosures are equally liable, with the professional bookmaker, to fine or imprisonment. Then what is it that this Act of 1853 in its enacting parts has enacted. By sect. 1 it enacts first that no house, office, room, or other place shall be opened, kept, or used for the purpose of the owner, occupier, or keeper thereof, or any person using the same, or of any person having the care or management, or in any manner conducting the business thereof, betting with persons resorting thereto, that is to say, betting either on credit or by way of ready money; and secondly, it enacts that no house, office, room, or other place shall be opened, kept, or used for the purpose of any money or valuable thing being received by or on behalf of such owner, occupier, keeper, or person as aforesaid as or for the consideration for any assurance, undertaking, promise or agreement, express or implied, to pay or give thereafter any money or valuable thing, on any event or contingency of or relating to any horse race. This in express terms hits what is in the preamble, namely, betting by way of deposit. This section does go beyond the preamble in this, that it embraces and renders illegal, betting by way of credit which is not within the preamble, as also betting by way of ready money which is within the preamble, but only, be it observed, if either takes place in the prohibited premises. There are also other words in the enacting section which I will refer to hereafter. These two classes of betting were held to be distinct offences by



Lord Coleridge, C.J. and Collins, J. in *Bond v. Plumb* (70 L. T. Rep. 405 ; (1894) 1 Q. B. 169). This first section thirdly enacts that every house, office, room, or other place opened, kept, or used for the purposes aforesaid or any of them (that is, for betting on credit or by way of ready money) is declared to be a common nuisance, and contrary to law. Sect. 2 enacts that every house, office, room or place opened, kept, or used for the purposes aforesaid, or either of them, shall be taken and deemed to be a common gaming-house within the Act of 1845 (8 & 9 Vict. c. 109). If a house is proved to be a common gaming-house all persons found therein may be arrested, searched, and brought before a justice of the peace, and every owner or keeper of such house, and every person having the care or management thereof is liable to a maximum penalty of 100*l.* or six months imprisonment with or without hard labour. Sect. 11 appears to me to have practically the same effect as sect. 2, and it gives express power of entry into any house, office, room, or place kept or used as a betting house or office, and, if necessary, to use force for making such entry, whether by breaking doors or otherwise, and it also gives express powers of arrest and search therein. Sect. 12 gives similar powers to the metropolitan police within the metropolis. So much for the sections relating to the premises on which betting is prohibited by the Act. I now come to sect. 3, which deals with the persons owning, occupying, or using the same. This section makes the doing of three things criminal, and subjects the offender to penalties similar to those above-mentioned. The first offence is for any person, being the owner or occupier of any house, office, room, or other place, or a person using the same, to open, keep, or use the same for the purpose of betting with persons resorting thereto, *i.e.*, upon credit or by way of ready money. The second offence is for any person, being the owner or occupier of any house, room, office, or other place, to knowingly and wilfully permit the same to be opened, kept, or used by any other person for the purposes aforesaid, or either of them—that is, betting upon credit or by way of ready money. And the third offence is for any person to have the care or management of, or in any manner assist in conducting the business of, any house, office, room, or place opened, kept, or used for the purposes aforesaid, or either of them, which means the assisting in the conduct of the business of a betting house for carrying on betting either on credit or for ready money. Neither this section nor the Act prohibits persons (other than professional bookmakers) resorting to betting houses for the purpose of betting therein, though if found there they are liable to arrest and search, and to be taken before a justice of the peace. When the preamble and these sections of the Act are read together, as they must be in order to understand the true scope of the Act, in my judgment the enacting sections have reference to the opening, keeping, and using of betting houses, offices, and rooms or other places akin or

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equivalent thereto, wherein the business of a betting house or betting office is carried on. There are words in the enacting sections which are not to be found in the preamble; for instance, the words "room or other place," "any person using the same," and "any person having the management of the business"; but these words were inserted, in my judgment, not for the purpose of extending the operation of the Act, and of embracing cases not within its operation, but for the better carrying out of the object intended, and reaching every kind of evasion which might otherwise have been attempted; and that this was the view of Lush, J. will be seen upon reference to a passage in his judgment in the case of *Haigh v. The Town Council of Sheffield* (L. Rep. 10 Q. B. 102, at p. 109), with which passage I entirely agree. In my opinion, when the Legislature added throughout the enacting sections of the Act the words "other place" or "place," and abstained from defining, as it did, what those words should mean, it did so not for the purpose of extending the ambit of the Act, but in order to leave it to the Court, as each case arose, to determine whether the individual charged was or was not in fact attempting to evade and evading the Act by carrying on the business of a betting house in a "place" akin or equivalent to that of a betting house or office, though not actually in a house or office. It is for this purpose that the words "room," "other place," "place," "any person using the same," "any person having the management of the same," were added. If a person carries on the business of betting in a place akin to that of a betting house, whether such place is set up upon a racecourse or elsewhere, then he is guilty of the betting made illegal by the Act, for he is then carrying on the business of a betting house in a prohibited place. It is the user of the prohibited place for the business of betting which is struck at by the Act. This, in my judgment, is the true construction of the Act for the suppression of betting houses. The Scotch case cited by Mr. Joseph Walton (*Henretty v. Hart*, 13 Rettie (Court of Justiciary Cases), 4th series, 9), supports my view of the Act. I now come to three cases decided upon the Act which, in my view, have an important bearing upon the case. There are but three cases in the books during the forty-four years that the Act of 1853 has been in operation in which professional bookmakers at race meetings have been proceeded against under the Act. In each the bookmaker was convicted, but the grounds upon which the conviction was upheld are most significant. The first case is that of *Shaw v. Morley* in 1868 (19 L. T. Rep. 15; L. Rep. 3 Ex. 137), which related to a plot of ground outside the inclosure at Doncaster race stand, upon which had been erected a wooden structure of five feet high, fronting two ways, one to the course, the other to the inclosure. It was covered with green baize, and had boards used as desks fronting each way. Upon this structure were the words "William Nicholl of Nottingham," and papers, partly printed and partly written, with the names of the racehorses and betting

prices. The betting lists so exhibited had on them the odds upon and against each horse in each race, which William Nicholls the proprietor of the structure, was willing to bet. The appellant Shaw transacted the betting business so carried on at one frontage of this structure for Nicholl. Kelly, C.B., and Martin and Pigott, BB., held that what Shaw was doing was within sect. 3 of the Act, and quite rightly, for what he was doing was in truth and in fact carrying on the business of a betting house or office, if not in a betting house, office, or room, at any rate in a place akin or equivalent thereto, and was, therefore, carrying on a betting business in a prohibited place. If Shaw had not been convicted because he was not, in fact, using a betting house or office, the Act would clearly have been evaded, for, as I have said, a man may well set up and use a betting house or office, or other place akin or equivalent thereto upon a racecourse, and carry on the business of a betting house thereat. The next case is that of *Bows v. Fenwick*, in 1874 (30 L. T. Rep. 524; L. Rep. 9 C. P. 339). This case went a step in advance of the last, but was really decided upon similar grounds. In this case a professional bookmaker upon the Roodee at Chester, during the races, stood upon a stool, two feet six inches high, over which was a large umbrella capable of covering several persons, upon which was painted "G. Bows, Victoria Club, Leeds," and which umbrella was fixed into the ground with a spike. There was also a card exhibited—"We pay all bets first past the post." The Court (which consisted of Lord Coleridge, C.J. and Brett and Denman, JJ.) held that this business so carried on by the bookmaker was within sect. 3 of the Act of 1853, because the bookmaker was carrying on his business in what Lord Coleridge, C.J. called a "fixed and ascertained place." Brett, J. said that "the kind of gaming prohibited is the opening and keeping a place for the purpose of gaming or betting with persons resorting thereto—a fixed place to which all persons may resort." Denman, J. said that it was enough to bring the place used by the appellant within the Act because there was "a piece of ground ascertained and appropriated by the appellant for carrying on his proceedings." The *ratio decidendi* of these learned judges appears to me to be that the evidence showed that the appellant was carrying on his business of betting within a prohibited place, that is a place akin or equivalent to that of a betting house or office, and that this was the inference which they drew from the facts proved. I do not dissent from the inference, but I think that it is the limit to which the provisions of the Act can be extended. The last case is that of *Gallaway v. Maries*, in 1881 (45 L. T. Rep. 763; 8 Q. B. Div. 275). In this case the Court went further, and, with submission, I think went too far. A bookmaker, together with a companion, carried on his business of betting at Four Oaks Park races within the inclosure, the companion standing upon a small wooden box unattached to the ground. The Court (Grove and

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Lopes, JJ.) held this to be within sect. 3 of the Act. Grove, J. held it to be so because the box defined a certain spot. Lopes, J., after pointing out that putting down a piece of matting and standing upon it would have been the same thing, assented with much doubt to upholding the conviction, thinking himself bound by *Bows v. Fenwick* (*ubi sup.*). I cannot think that the correct inference in this case was drawn, viz., that this appellant was keeping or using a place akin or equivalent to a betting house or office. But whatever may be said of these three cases, there is this undeniable fact apparent in each—that not one of the eight learned judges who respectively decided them (Kelly, C.B., Martin, B., Piggott, B., Lord Coleridge, C.J., Brett, Denman, Grove, and Lopes, JJ.) would have held the convicted bookmaker to have brought himself within the Act of 1853, had it not been for the special uses he had made of the particular desk, the stool and umbrella, and the box. It is immaterial whether the right inference was drawn or not from the proved facts of these cases; the point is, and a most important point it is, that not one of these learned judges would have held the point tenable that professional bookmakers, by using an inclosure at a race meeting, as they did in the present case, had brought themselves within the Act of 1853, and had it not been for the special use which had been made of the desk, the stool and umbrella, and the box in these cases, the convictions would obviously have been quashed. There is therefore a formidable consensus of judicial opinion to be set off against the opinion of the five learned judges who decided in the present year the case of *Hawke v. Dunn* (*ubi sup.*). I do not propose to deal with the numerous cases which have arisen about the user of rooms at public-houses by betting men when carrying on their business of betting with persons resorting thereto, for "house" and "room" are specifically mentioned in the Act as two of the prohibited places when used by a betting man for the carrying on of his business of betting therein, and in my judgment these cases have no application to betting in an inclosure at a racecourse in the usual way as in the present case. There are, however, two cases, decided in 1874, to which I must refer. The first is the case of *Eastwood v. Miller* (30 L. T. Rep. 716; L. Rep. 9 Q. B. 440). In this case the occupier of inclosed grounds containing nearly four acres was charged that he did unlawfully use a certain place, to wit, a field, for the purpose of betting on a certain pigeon shooting match for money, contrary to 16 & 17 Vict. c. 119, s. 3. It is true that professional bookmakers were present, but Lush, J. apparently took the question to be whether the appellant permitted the place to be used for the purpose of betting, and Archibald, J. said: "There are two questions: first, whether this place is a place within the meaning of 16 & 17 Vict. c. 119; and secondly, whether there is evidence that it was permitted to be used for the purpose of betting." I must point out that, if this was the question,

there was no offence committed, for it cannot be contended that owning, occupying, keeping, or using a place for persons betting therein *inter se* is any offence within the Act. It is also remarkable that neither *Shaw v. Morley* (*ubi sup.*) nor *Bows v. Fenwick* (*ubi sup.*) was called to the attention of the Court. It may be that the latter case had not been published in the reports before the day when *Eastwood v. Miller* (*ubi sup.*) was decided, and it should also be noticed that *Eastwood v. Miller* was only argued on one side. If this case decided that a professional bookmaker, moving about a four-acre field and betting with persons desirous of betting with him, is using a place akin or equivalent to a betting house or office, I respectfully say that in my judgment the decision is wrong. The other case is that of *Haigh v. The Town Council of Sheffield* (L. Rep. 10 Q. B. 102), in which the appellant was charged with keeping and wilfully permitting a cricket ground of which he was the occupier to be used by certain persons for the purpose of betting with persons resorting thereto. Fifteen or twenty professional bookmakers stood on chairs and stools in different parts betting with different persons, and each had a man behind him recording the bets. The magistrates convicted the appellant, and the Court of Queen's Bench (Blackburn, Miller, and Lush, JJ.) held that they were right. If this conviction had been supported upon the inference drawn in *Bows v. Fenwick* (*ubi sup.*) I should have had nothing to say to it, but it does not appear to have been so. Blackburn, J. at p. 105 said: "By sect. 3 it is made an offence in the owner or occupier to permit the place to be kept or *used* for the purpose of betting. It must be taken on the statement of the case that the appellant was well aware of what was going on"; and at p. 107: "The magistrate was therefore right in saying the appellant did permit the place to be used for betting; on the principle that a man must be taken impliedly to be answerable for what he knows to be the ordinary consequence of what he expressly permits." To use or permit a place to be used for the purpose of betting, as before pointed out, is no offence at all; but to use or permit a betting house, office, or room, or other place akin or equivalent thereto, to be used for the purpose of carrying on the business of a betting house or office is the offence created by the Act and what is rendered illegal. If this case decides that professional bookmakers moving about a field, betting with those of the public who are willing to bet with them, are carrying on the business of a betting house in a place akin or equivalent to that of a betting house or office, I do not agree with it, and I think, if this be so, that this decision, as well as *Eastwood v. Miller* (*ubi sup.*) is wrong. Lord Coleridge, C.J. and I, in 1888, in the case of *Snow v. Hill* (52 L. T. Rep. 859; 14 Q. B. Div. 588) held that the appellant, who was charged that he, being a person using a certain place, to wit, a reserved portion of a field, unlawfully did use the said

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place for the purpose of betting with persons resorting thereto, was not within the Act of 1853, because he exercised his business of bookmaker upon no ascertained piece of ground, in other words, upon no premises akin or equivalent to a betting house or office, as in *Shaw v. Morley* (*ubi sup.*), *Bows v. Fenwick* (*ubi sup.*), and as had been held in *Gallaway v. Maries* (*ubi sup.*), and we followed the more recent cases in preference to *Eastwood v. Miller* (*ubi sup.*) and *Haigh v. The Town Council of Sheffield* (*ubi sup.*). It is a mistake to say, as Hawkins, J. said in *Reg. v. Preedy* (17 Cox. 433) in 1888, and again in *Hawke v. Dunn* (*ubi sup.*), that we decided *Snow v. Hill* (*ubi sup.*) upon the ground that there was no evidence that the bookmaker was carrying on the business of a bookmaker, but was only carrying on betting as one of the public. The view of *Snow v. Hill* (*ubi sup.*) taken by Lindley, L.J. in *Liddell v. Lofthouse* (74 L. T. Rep. 139; (1896) 1 Q. B. 295) is correct, and I also agree in his judgment therein when he drew the inference and held that the hoarding in that case was a "place" within the meaning of the Act. I also agree with what Lindley, L.J. said of the case of *Doggett v. Catterns* (*ubi sup.*), and I have nothing to add thereto. For the reasons above I am of opinion that to use an inclosure at a race meeting, as it was used in the present case, is not the user of a place akin or equivalent to a betting house or betting office, which is what is prohibited by the Act. In my judgment, the case of *Hawke v. Dunn* (*ubi sup.*) was not correctly decided, and the Court was not justified in extending the meaning of the Act, as it did, by in reality striking out the dominant words "house, office, or room," and relying upon the words "other place" as if they were the dominant words of the section. If this construction of the Act be correct the dominant words are mere surplusage, which is a construction that I cannot adopt, and in my judgment this appeal must be allowed.

RIGBY, L.J. read the following judgment.—I have the misfortune to differ in this case from my learned brothers, but, as I have formed an opinion differing from theirs, I feel bound to give my reasons at considerable, but I hope not undue, length. The facts admitted in this case, so far as they appear material, are as follows: The "Reserved Inclosure," as it is called, is part of the lands called "The Kempton Park Racecourse," owned and occupied by the defendant company, and does not exceed a quarter of an acre in area. Its linear dimensions appear to be about forty yards by thirty. At one end, being that most distant from the actual racecourse, it consists of raised tiers of seats covered over with a roof forming part of the grand stand. The rest of the inclosure is fenced off from the adjoining land by iron rails, but it is not covered in. Professional betting men, or bookmakers, frequent the inclosure on race-days in numbers varying from 100 to 200. The whole number of persons admitted to the inclosure on race-days varies from 500 to 2000.



The bookmakers attend for the purpose of carrying on their business there in manner described in the particulars. Of other members of the public frequenting the inclosure the greater number go there for the purpose of backing horses with bookmakers, but a certain number do not bet at all. The bookmaker in the inclosure invariably carries on the practice of betting there as described in the particulars. He does not confine himself to any fixed spot in the inclosure, nor does he use any such apparatus as a desk, stool, umbrella, or tent, though any particular bookmaker is usually to be found in or near the same part of the inclosure. With a few exceptions, when betting takes place on future events, the betting is confined to betting on the races of the day; and no betting commences on any individual race before the names of the horses which are going to run in that race are announced on the telegraph board, usually about a quarter of an hour before the time appointed for the race to be run. Such betting is known as post betting, and continues in most cases till the fall of the flag when the horses start, and bets are frequently made while the race is being run. Members of the general public are generally backers, and each selects as a rule one horse which he desires to back. In general it is the object of the bookmaker to back the field against as many horses as possible. These general propositions are, however, subject to important exceptions as pointed out in the particulars. The practice of calling out the odds which he will give or take in respect of a particular horse is largely adopted by every bookmaker betting in the inclosure, for the purpose of attracting the attention of backers. No person in the inclosure is admitted with, or has any greater or less right to act as a bookmaker than any other person, although in fact and practice the limited number of persons who do act in that capacity collectively form the market for such bets as the rest of the public or the backers wish to make. Some bookmakers carry on a ready-money business in the inclosure, that is they usually require the backer to deposit his stake in respect of the bet at the time the bet is made. Others do the greater part of their business on credit, that is to say, no money is deposited on either side, but they only do business in this way with persons whom they know to be of good credit. Should any person unknown to them offer to bet with them, they would either decline to bet or require such person to deposit his stake. All the above facts are to be found in the pleadings or particulars, and are taken and admitted to be true. In their defence (paragraph 2) the defendant company denied that it knowingly and wilfully permitted the inclosure to be used for the purposes alleged, but before the Lord Chief Justice, and again before the Court of Appeal, it was distinctly admitted that the defendant company, knowing the facts as to the user of the inclosure above referred to, went on admitting persons to the inclosure and charging them an extra fee for admission thereto, and in that sense

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permitted the user. On this admission it would seem that the defendant company does in law permit the user such as is shown in the particulars of the inclosure. As a sort of supplement to the particulars, there is an important statement of fact with reference to what has taken place in other inclosures, which, so far as is necessary will be dealt with hereafter when the effect of the preamble is considered. On the admitted facts the following observations occur: The area of the inclosure does not equal that of many rooms that might be mentioned. If there was an average attendance of bookmakers (150), the whole area (about 1200 yards) would afford on an average for each bookmaker, if they distributed themselves evenly, about eight superficial yards, the area of only a very small room or office of eight feet by nine feet. If however, as is probable, the bookmakers take their positions on the outside of the inclosure, as being the place where they would be most easily found, there would not be a lineal yard for each bookmaker. It is true the position of a particular bookmaker in the inclosure is not fixed to any particular spot, or indicated by any mark, but as he is usually to be found in or near the same part of the inclosure, it seems plain that he must practically confine himself to a space in the inclosure not exceeding the dimensions of a very small room. During the quarter of an hour or so within which the betting on a particular race is practically confined, the inference must be that for practical purposes he may be as easily found by those who look for him as though he were all the time seated at a desk or standing on a box or platform of his own. During the same time his opportunities of betting with persons who resort to the inclosure, and their chance of finding him to bet with, will be as great as if he were in a house, room, or office. Lastly, subject to the question whether the inclosure is a place within the meaning of the Act, it is plain that the kind of betting carried on there is that which was struck at by the Act, for the bookmakers not only bet with persons resorting to the inclosure, but receive deposits on promises to pay, though this practice is subject to the limitations mentioned by the particulars. The three main points for decision are—(1.) Whether the inclosure is a place within the meaning of the Act. (2.) Whether it is kept or permitted to be used by the defendant company for any purpose forbidden by the Act. (3) Whether there is anything in the Act from which it can safely be inferred that such an inclosure was intended to be excepted. Having regard to the admission made at the trial, No. 2 seems to depend upon the question whether within the meaning of the Act the inclosure is used by the bookmakers frequenting it. It will be convenient to deal first with the enacting clauses which must govern, unless there be some ambiguity which makes it permissible to refer to the preamble. Sect. 1 contains the leading enactment which has to be construed. Leaving out words inapplicable to the present case, the section provides that no house, office,

room, or other place shall be opened, kept, or used for the purpose . . . of any person using the same for betting with persons resorting thereto, or for the purpose of any money or valuable thing being received by or on behalf of a person using the same as a consideration for a promise to pay money on any event relating to a horse race. It is reasonably plain from the enacting clauses that the very general word "place" as used here must receive some limitation. If a man were to use within the meaning of the Act every place on which he happened to stand when he made a bet, or received a deposit, the operation of the statute would prevent any person carrying on the business of a bookmaker, or perhaps any betting at all. A "place," however, need not be a house, office, or room. Such a construction would be equivalent to striking it out of the Act. It is said that it must be *ejusdem generis* with house, office, or room. But the difficulty in such a case is to determine the genus which is to comprise as species all the cases that have to be dealt with, and, as that can only be gathered from the Act taken as a whole, not much, if any, assistance can be obtained from the *ejusdem generis* doctrine. It will be safer and easier, and at the same time sufficient for the present case, to indicate some place that must be included rather than to attempt a definition to cover all places that ought to be included in the Act. The words "other place" being obviously introduced to supplement the words "house, office, or room," it would be wrong to exclude any place the use of which involves exactly the same mischief. Perhaps it would be safe to say that no place should be excluded to which, in a reasonable sense, persons can resort with a reasonable business probability of being brought into contact there for practical betting purposes with a person or persons using it for betting with those who do resort to it, if the latter choose to bet. At any rate, it would seem clear that mere variation in the physical condition of a place accessible as a place of resort—as, for instance, whether the place is or is not covered for the time being wholly or partially by a roof—cannot form the test for determining whether it falls within the Act or not. An uncovered yard, whether or not included within the curtilage of a house, an uncovered skating-rink or skittle-alley, a piece of building ground for the time being either entirely vacant, or with buildings in no way covered in, are all cases in which the mischief and nuisance arising from their being used for the purposes forbidden by the Act would be in no way increased by covering them in, or mitigated by their being left uncovered. The same thing may be said of the way in which a place is bounded, except perhaps that an inclosure surrounded by an open railing, or a place uninclosed, but capable otherwise of identification, may be more of a nuisance than one which is entirely fenced off by walls of masonry from the view of, and so as to prevent interference from within with, the outside public. If an inclosure similar in all respects to that which is being dealt with in this case were

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Racecourse  
inclosure—  
Betting ring  
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office, room, or  
other place”  
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found to be used in a town for purposes similar to those for which the Reserved Inclosure is used, it would seem impossible to contend that it would not be a place within the meaning of the Act. (2) With reference to user: it is plain that the same rules which apply to houses and rooms must apply in general to places which are not houses or rooms, but still are within the Act. Now, it seems impossible to say that a man does not use a house or a room which as a whole is set apart by the owner or occupier, or permitted by him to be used, for purposes forbidden by the Act, unless he confines himself to one spot in the house or room, as the case may be. The house may contain many rooms, or the room may be very large, but the man is using the house or room when he uses any part of it, and the Act has in it nothing to suggest that absolute fixity of position or any other localisation of the user than is involved by the boundaries of the house or room itself is necessary. Again, it seems impossible to say that the user of a house or room, to fall within the Act, must be an exclusive user by one person of the whole or any particular part. First of all, this would involve the change of the more general phrase “any person using” into the more restricted phrase “the person using,” for which there is no warrant. But further, such a construction of the Act would leave it open to avoid its operation in a vast number of cases, though the mischief struck at remained or was increased. It seems impossible to contend successfully that the use of a house or room with the permission of the owner and occupier by one professional betting man is more of a nuisance or otherwise more objectionable than a similar use by more than one, either jointly or one competing with another, at the same time. Indeed, the more men permitted to use the house or room at the same time, the greater would be the nuisance, and the greater the probability of mischief. The same considerations must in general apply to any place, not being in a house or room, which is brought within the meaning of the Act. But several objections to this construction as applicable to the present case have been urged. It is said that sect. 2, which provides that every place kept or used for the purposes aforesaid, or any of them, shall be taken and deemed to be a common gaming-house within the meaning of 8 & 9 Vict. c. 109, shows that “place” should be confined to something in the nature of a house, and that the section cannot properly be applied to an inclosure open to the sky. But the words “taken and deemed” are usually employed to indicate that the thing spoken of is not in itself the thing which, for the purposes of attaching to it certain legal incidents, it is to be deemed to be. Then it is said that it is impossible to suppose that the Legislature intended to attach the incidents of a common gaming-house to such a place as the Reserved Inclosure. The proper way of ascertaining the intention is by construing the words used, and it cannot be doubted that the Legislature intended to attach those incidents to any place

within the meaning of the Act, including the cases of uncovered places in towns already referred to. Of course, in determining the meaning of the word "place," sect. 2 may be looked at as well as any other part of the Act. But, whatever validity such an argument might have in the case of an entire racecourse, which may extend over many acres and be resorted to by thousands or tens of thousands of persons who never bet at all, and many, and indeed most, of whom may never come into contact with a bookmaker at all, it cannot outweigh the reasons for considering as a place within the Act the Reserved Inclosure which contains on an average not less than one bookmaker out of every ten persons resorting to it, whilst the greater number of the persons not bookmakers go there for the purpose of backing horses with bookmakers. Places which are not houses may under the provisions of 8 & 9 Vict. c. 109 itself be gaming-houses. Sects. 11 and 12 of the Act under discussion show that it was the deliberate intention of the Legislature to apply the main provisions of the Gaming Act to places within the Act, and if, as is extremely unlikely, these sections, which are in the main intended to procure evidence in cases of suspicion, were to be put in force in a case like that of the Reserved Inclosure, the minority who attend without any intention of betting would only have themselves to thank for any resulting inconvenience occasioned to them. (3) It is said that the Act was not intended to apply to betting on racecourses at all. If by this is meant only that ordinary betting whether between persons who are not professional betting-men, or between professional betting-men who in no way attach themselves to a place for the purpose of betting with those who resort thereto, it is apparently true, not only of racecourses, but of all other parts of the country. Then the objection has no reference to the state of facts upon which the Court is called upon to adjudicate. But if it means that every sort of betting is permissible, provided only that it takes place on a racecourse, the objection plainly goes too far. The enacting part of the Act contains no reference, direct or indirect, to racecourses at all. It would seem to be impossible to contend successfully that the defendant company might lawfully permit a house, room, or office on the racecourse to be used by a bookmaker for purposes forbidden by the Act, though apparently there would be no reason why they should not have done so if the Act had not been passed; or, again, that a bookmaker might take up his stand at a place on a racecourse outside an inclosure, and there carry on his business without moving from the spot, though probably such a practice prevailed at the passing of the Act, and had done so ever since bookmakers came into existence as a class. When once it appears that the Act is applicable in some cases to owners and occupiers of racecourses as well as to other owners and occupiers, the contention becomes one for a partial exception only, that is to say, an exception of inclosures for

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betting purposes, which is certainly a difficult one to support, and could not be made out, unless there can be shown to be a material distinction between them and other parts of racecourses. The title and preamble of the Act have mainly been relied upon for this purpose. The title may be dealt with shortly. With reference to Acts passed as this was before 1854, when the practice of the House of Commons was altered by Standing Order 34, which for the first time authorised the House in Committee to amend the title, there is a great preponderance of authority in favour of the proposition that the title forms no part of the Act, and cannot even be looked at for the purpose of construing the Act: (see Maxwell on Statutes, 2nd edit., pp. 50, 51, and cases there cited). But this question need not be gone into further, because in the present case it is quite plain that the Act is not confined to the purpose indicated by the title. The preamble no doubt stands on a different footing, since it does form part of the Act. But there are numerous instances in which the enacting clauses have gone, upon their true construction, beyond the scope of the preamble, and yet have not been controlled by it, and the true rule seems to be that the preamble cannot be resorted to for the purpose of controlling the enacting clauses, either by restricting the scope of them, or by enlarging it, and cannot be relied upon, unless it be in itself clear and precise in meaning, and there is some ambiguity in the enacting clauses themselves which may be cleared up by it. Of course, cases will arise where it may be difficult to determine whether the enacting clauses do or do not present such an ambiguity as to require or admit the explanatory operation of the preamble, but, the above examination of the enacting part of the Act seems to show that independently of the preamble there could be no reasonable doubt as to the construction. Even if it be admissible, great care is required in drawing conclusions from it. The recital is: “Whereas a kind of gaming has of late sprung up tending to the injury and demoralisation of improvident persons by the opening of places called betting houses or offices, and the receiving of money in advance by the owners or occupiers of such houses or offices, or by other persons acting on their behalf, on their promises to pay money on the events of horse races and the like contingencies,” and then follow the words, “for the suppression thereof be it enacted, &c.” Now, it is clear that the enacting clauses do go beyond the preamble in many particulars of importance, *e.g.*, by including within the prohibition of the statute some places which are not houses or offices, and also by including houses, offices, and places where money is received in advance not by or on behalf of the owners or occupiers, but by persons using the houses, &c., and also by including the receipt by any of the same persons not only of money, but also of any valuable thing, and also by extending their (*i.e.*, the owners’ or occupiers’) promises to pay money



to promises by any of the aforesaid persons, to give any valuable thing, or to secure the paying or giving by some other person of any money or valuable thing. There can be no doubt that these extensions of the operation of the Act, all of which are to be found in sect. 1, are intentional and deliberate, and could not be affected or controlled by the preamble, though it mentions none of them. Why, then, should it be held that the equally plain enactment of the same section, whereby every house, office, room, or place opened, kept, or used for the purposes mentioned, or any of them, is declared to be a common nuisance, and contrary to law, should be subject to the exception of places, whether on a racecourse or elsewhere, which had been for a considerable time so opened, kept, or used? No doubt this preamble mentions that a kind of gaming had of late sprung up. These words, however, would be sufficiently satisfied by the great and notorious increase shortly before the passing of the Act of the kind of gaming referred to, without its being necessary to interpret them as asserting that it had not previously been known. But, even assuming that no betting houses or offices had existed otherwise than within the vague period covered by the words "of late," which would be a very strong assumption to make, if we are also to assume that the same kind of gaming had been openly and notoriously carried on in racecourse inclosures for more than half a century, it would be going far beyond the principle which has hitherto been applied to the control by the preamble of the enacting clause, if it were held that places which otherwise would fall within the enacting clauses are to be excepted, because they have long been opened, kept, or used for the forbidden purposes. The respondents rely upon a statement introduced at the end of the particulars to the effect that the description of betting carried on in the Reserved Inclosure applies not only to that inclosure. It is there said that, at the time of the passing of the Act of 1853, such inclosures were in like manner frequented by bookmakers, and betting transactions of precisely the same character were therein openly and habitually carried on by them, and had been so carried on since the beginning of the present century. This statement requires careful consideration before it can safely be acted upon. The first observation that occurs upon it is that it is a wholly one-sided one in the sense that it deals with racecourse inclosures only, and not with other places at all; in other words, it affords no means of judging how far the practice there was exceptional. It gives no information as to the practice of bookmakers outside the inclosure. It would be a singular thing if, long before the passing of the Act, and indeed from an early period after they came into existence as a class, bookmakers did not do what they certainly were doing notwithstanding the Act very soon after its passing, as appears by reported cases, namely, appropriate on the racecourse places where they could carry on their business. If they were so doing, the only distinction that could be sug-

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gested between inclosures and other places on racecourses appropriated by bookmakers would be that in the former the betting would be more concentrated and the bookmakers more easy to find. The reasonable inference seems to be that inclosures were used to supply a felt want for a more convenient place for the bookmakers to carry on their already established business in, and thereby to make a profit to the owners, rather than that they preceded and afforded the example for the business of betting in outside places on the racecourses. Taking the words “since the beginning of the present century” literally and according to their primary meaning, and contrasting them with the words “ever since” which occur immediately afterwards, they do not involve a statement that the practice began with the century, or at any definite time before the commencement of this Act. The omission of the word “ever” may have been intentional, and then the statement becomes as vague with reference to time as the preamble itself of the Act, and no argument can be founded on it. There can be no reason why the parties to the action should not be kept strictly to the statements which they deliberately prepare. If, however, by straining the language the statement is construed as fixing the commencement of the practice referred to as far back as the beginning of the present century, the statement so construed entirely differs in its nature from the admissions contained in the particulars as to matters within the knowledge of the parties to the action. It becomes an assertion of fact as to a period far beyond living memory, and the Court has no knowledge of the evidence on which it is founded, and no means of judging as to its accuracy. It would be unfortunate if the decision of an important question of construction were to depend upon a statement which may turn out seriously to exaggerate the length of time during which the practice referred to had existed before the passing of the Act. It would seem, however, that, even on the construction last referred to, the statement, though accurate, would afford no ground for exempting racecourse inclosures from the operation of the Act. The application of it must depend upon the assumption that the promoters of the Act and the members of the Legislature generally knew of the facts contained in the statement relating to such inclosures, and, with that knowledge, intended by the words used in the preamble to exclude them. But, if that knowledge and intention both existed, it is almost impossible to give any sufficient reason why some more direct language was not used in order to make the intention clear. It is quite a common thing for a preamble to contain a statement of the occasion which has led to the necessity for legislation, without exhaustively describing the legislation intended, and that has been already shown to be the case with reference to this preamble and sect. 1 of this Act. Further, if the Legislature intended to leave unaffected cases in which the kind of betting struck at had gone

on for a long time, the natural thing would have been to limit a time for that purpose, and not to leave so important a question to be determined on the vague phrase "of late sprung up." It could hardly be contended with success that a betting-house otherwise clearly within the Act would escape the operation of it by being shown to have been opened for forty or fifty years before the passing of the Act, and the same considerations ought to be applied to all places within the meaning of the Act, as there is nothing to make a distinction in this respect between one place and another. I have thought it better down to this point to confine myself to a consideration of the Act itself, and to express my own individual opinion on the construction of the Act independently of the decided cases, partly because there is no case binding upon this Court, and partly in order to avoid the danger of losing sight of the Act itself in considering the decisions upon it. These decisions are, however, of great importance, and I now proceed shortly to refer to them. (1.) As to place: there is a remarkable consensus of opinion on this point, when the cases are examined, and, in my judgment, no single case which, when properly understood, would conflict with the interpretation which I have above suggested. *Doggett v. Catterns* (12 L. T. Rep. 355; 17 C. B. N. S. 669; 19 C. B. N. S. 765) has been thought to be a decision that a place under a clump of trees without any mark of appropriation by the betting-man charged cannot be a place within the meaning of the Act. This is shown by Lindley and Kay, L.JJ. in *Liddell v. Loftthouse* (74 L. T. Rep. 139; (1896) 1 Q. B. 295) not to be the case, the decision having turned upon the construction of sect. 4 of the Act, which was held not to apply to a man using a place independently of the owner or occupier. In that case not only Erle, C.J. and Keating, J., in the Court below, but a majority of the judges in the Exchequer Chamber, namely, Pollock, C.B. Crompton and Blackburn, JJ., and Channell, B., thought that the place in question would be a place within the meaning of the Act, if it could have had an owner or occupier. *Snow v. Hill* (52 L. T. Rep. 859; 14 Q. B. Div. 588), decided by Coleridge, C.J. and Smith, J. in 1885, was relied upon both in *Hawke v. Dunn* (76 L. T. Rep. 355; (1897) 1 Q. B. 579), the case against which the appeal is in substance brought, and on this appeal, but there was in that case, so far as the report goes, no evidence of the kind of betting struck at by the Act. For anything that appeared in *Snow v. Hill* (*ubi sup.*), as reported, the defendant, who did not confine himself to any particular part of the racecourse, but was walking about making bets, may have been not a professional bookmaker betting with persons resorting to the place, but an ordinary member of the public making casual bets. *Shaw v. Morley* (19 L. T. Rep. 15; L. Rep. 3 Ex. 137), decided by Kelly, C.B., and Martin and Pigott, BB., in 1868, was a clear decision that an uncovered place on a racecourse might be an office or place within the meaning of the Act. *Bows*

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v. *Fenwick* (30 L. T. Rep. 524; L. Rep. 9 C. P. 339), decided by Coleridge, C.J. and Brett and Denman, JJ., in 1874, was a decision that a place on the Chester racecourse, identified only by a stool and umbrella, was a place within the meaning of the Act. *Gallaway v. Maries* (45 L. T. Rep. 763; 8 Q. B. Div. 275), decided by Grove and Lopes, JJ. in 1881, was a case only differing from *Bows v. Fenwick* (*ubi sup.*) in the fact that the means of identifying the place was a loose box—obviously, I think, an immaterial distinction. *Haigh v. Sheffield Town Council* (L. Rep. 10 Q. B. 102), decided by Blackburn, Mellor, and Lush, JJ., in 1874, was one brought against the occupying tenant of a cricket ground, used, not only for cricket, but for foot-racing, games, and sports, for permitting the user of the inclosure for betting with persons resorting thereto. The evidence showed that from fifteen to twenty professional bookmakers stood on chairs and stools in different spots calling out the odds, and betting with different persons and receiving deposits. Any one of those bookmakers might, within the principles of the cases already cited, have been convicted of using the place where they stood for illegal purposes, and the conclusion arrived at by the Court that the defendant, who knowingly permitted such user, was guilty of an offence under the Act, seems to me an inevitable one. In my judgment, none of the last three cases referred to can have depended upon the character of the umbrella, box, or stool; and the only way in which the existence of those articles was material was as affording evidence that the bookmaker practically confined himself to a place where he could be readily found. *Eastwood v. Miller* (30 L. T. Rep. 716; L. Rep. 9 Q. B. 440) relied upon in *Haigh v. Sheffield Town Council* (*ubi sup.*) was decided by Lush and Archibald, JJ. in 1874, and treated a place 3a. 3r. 25p. in area as a place within the meaning of the Act. In that case there are expressions of both the learned judges to the effect that the size of the place cannot be of importance. It is not necessary to rely upon those expressions or to discuss them. The evidence showed that there were at least two bookmakers betting and receiving deposits, and the fair inference would be that they would so far confine themselves to one spot as to be capable of being found, and that I think would be enough to justify the decision. With regard to the Scottish case of *Henretty v. Hart* (13 Rettie, Court of Justiciary Cases, 4th series, 9), I will only say that I cannot reconcile the reasoning of the two learned judges, Lord Young and the Lord Justice Clerk, with the decision in *Haigh v. Sheffield Town Council*, before referred to, and that I prefer to rely upon that judgment. I concur more nearly with the reasoning of Lord Craighill, the dissentient judge in *Henretty v. Hart* (*ubi sup.*). Finally, the case of *Liddell v. Lofthouse* (*ubi sup.*), already mentioned and decided by Lindley and Kay, L.JJ. in 1896, shows that a place is not less a place within the meaning of the Act, because the

betting man using it has not placed any mark of his own upon it. (2.) As to user: The cases above referred to are authorities also as to user, and I need only refer in addition to decisions as to user in the following cases, which I think important for the decision of the question before the Court. The first is *Reg. v. Preedy* (17 Cox C. C. 433), decided by Hawkins, J. in 1888, in which the learned judge goes through all the authorities and explains the meaning of user in accordance with what I have above indicated. The others are *Hornsby v. Raggett* (66 L. T. Rep. 21; (1892) 1 Q. B. 20), decided by Mathew and Smith, JJ. in 1891, and *McWilliam v. Dawson* (56 J. P. 182), decided in the same year by the same learned judges, and in which it was held that a man used a tap-room or bar in a public-house for betting, though he did not confine himself to any particular part of it. (3.) As to the exemption claimed: The only case in which the precise point whether inclosures like the Reserved Inclosure, as distinguished from other places on racecourses, are exempted by implication from the Act is that of *Hawke v. Dunn*. I concur in substance with the reasoning of the judges in that case contained in the judgment of Hawkins, J. But almost all the cases decided under the Act, and especially all those where bookmakers have been convicted of carrying on their business on racecourses, are directly applicable to inclosures, unless a substantial and material difference between the inclosures and other ascertained places on racecourses can be made out. Though the preamble has been frequently referred to, it has never seemed to occur to anyone concerned that it made the length of time during which the practice charged has been carried on in any way relevant. On the above considerations I have arrived at the conclusion that the Reserved Inclosure is a place within the meaning of the Act, that it is permitted to be used by the defendant company for purposes forbidden by the Act, and that the plaintiff as a shareholder is entitled to the injunction asked for. The result would be, according to my individual opinion, that the appeal should be dismissed.

CHITTY, L.J. read the following judgment:—After the exhaustive judgments which have been delivered, little remains for me beyond expressing my own opinion. The facts have been fully stated; the Act of Parliament has been examined closely, and its provisions have been stated, analysed, discussed, criticised, and considered. For myself I have gone through a similar course of investigation. What I propose to do is to deal only with the more salient points, and to state the conclusion at which I have arrived. The case was heard by the Lord Chief Justice on the admissions contained in the particulars, and also on the additional admissions made at the Bar, the just inference from which appears to be that which the Chief Justice was prepared to draw, viz., that the defendants knowingly and wilfully permit the Reserved Inclosure to be used for the purposes for which it is actually used. The correctness of the admissions was not in

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any way called in question before the Chief Justice; they could not be questioned, nor were they questioned, in the argument before us. It is satisfactory to know that Mr. Asquith was instructed to say, and did say, in his opening before the Chief Justice that, on a careful investigation, the facts stated in the particulars may be assumed to be correctly stated. He said that the sole object of the action, so far as he was instructed, was to obtain the decision of the highest Court in the country upon what is undoubtedly a very important question of law. The question really is a mixed question of fact and law. It appears to be this: Is the Reserved Inclosure described in the particulars and used for the purposes therein stated on the days when the races are held a “place” within the prohibition of the Act of 1853. The two points (1) the nature of the place, and (2) the nature of the user, although properly made the subject of separate consideration, must in the result be dealt with together in combination in order to arrive at a just conclusion. It appears to me to be incorrect to ask whether the inclosure is excluded; the right question is, whether it is included. As the statute creates a criminal offence, it is incumbent on those who allege that the offence has been committed, to show affirmatively that it has been committed. I am not here relying on the old rule that penal statutes ought to be construed strictly. I think that all statutes ought to be construed reasonably. But, at the same time, I think that the Judicature ought to be on its guard against holding that certain acts are a criminal offence against a statute unless it is reasonably plain that those acts do amount to the offence within the meaning of the Legislature as disclosed by the statute itself and such surrounding circumstances as are properly admissible in evidence. The state of the law when the Act of 1853 was passed was this: The Legislature had before it in 1845 the question of betting. By the Act then passed it deliberately refrained from declaring betting illegal; it contented itself with making the contract of betting void, and taking away any right of action to recover a bet lost. The law stood thus when the Act of 1853 was passed: It was lawful for a man to bet, to bet habitually and systematically, and to carry on a business of betting whether on credit or by way of deposit; there was no difference in law between making a single or occasional bet and being a professional bookmaker. The law as to betting was not altered by the Act of 1853 except only by the special prohibitions contained in that statute. On that statute it is plain that betting of itself is not made illegal. Betting or not betting, a man must be in some place; and it is clear that the word “place” in that Act has not the general meaning of any or every place. Some particular kind of place is aimed at; what that is must be discovered from the statute itself. It is plain on the statute that the persons, not being the bookmakers who resort to the “place,” are not liable to the penalties of fine and imprisonment imposed by the Act,



but they are liable to what may be justly described as the degradation of being arrested and searched, and taken before a magistrate. Consequently, if the plaintiff's contention be right all persons who are found in this inclosure during the races, or at all events while the betting as described is going on, are liable to this treatment, although they are present for the mere purpose of seeing the races or their friends and acquaintances, and have no thought of making a bet. I am unable to think that this point is disposed of by saying that before the betting begins they may safely remain, but that directly it begins they must go, or submit to the risk of being molested by the police. Coming a little more closely to the language of the statute, I pass by the title on which I will place no reliance. It appears to me that no argument could be founded on the title which is [not plainly indicated by the preamble. Here we come to the old question of what is the true relation of the preamble to the enactments themselves. Undoubtedly it is a settled rule that the preamble cannot be made use of to control the enactments themselves where they are expressed in clear and unambiguous terms. But it has been well said that the preamble is a key to the statute, and that it affords a clue to the scope of the Act. These statements however, are subordinate to the settled rule above referred to. The contest and the difficulty arise directly you begin to apply those rules to the particular statute. The effect of the preamble must vary according to the greater or less ambiguity of enacting words and distinctive language of the preamble itself. Two things I think are clear on the interpretation of this statute; first, the preamble states in unambiguous language the principal mischief for the suppression of which the Act was passed; and secondly, the word "place" in the enactments is not used in its comprehensive sense, and, is to that extent at all events, ambiguous. Now I refer to one point in the preamble. It shows that the kind of gaming intended to be suppressed was a kind which had then lately sprung up. I read the words "of late," in the preamble as referring to something which had sprung up during the eight years interval after 1845, when the Legislature had considered the question of betting; but whether this be so or not it is impossible to read the words as relating to a practice which had been going on since the beginning of the century at all racecourse inclosures. Here the fact stated in paragraph 10 of the particulars is of great importance. The practice of the bookmakers and the betting transactions of the same character as those which take place in this Reserved Inclosure had been carried on in similar inclosures throughout the country from the beginning of the century, not secretly but openly and habitually. It is inconceivable that these practices, notorious as they must have been, should have been unknown to the Legislature when they passed the Act of 1853, and it is difficult to suppose that, if they had intended to suppress them, some direct and unmistakable words relating to them should not have been found in the

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Act; yet there are no such words. It is just worthy of mention that, although the Act has been in operation for nearly forty-four years, it is only recently that a suggestion has been made that these practices in racecourse inclosures are illegal and render the inclosures themselves prohibited places. During this long period an alert race have been asleep, the magistrates somnolent, and the police supine, if this recent suggestion be well grounded. But, of course, this is but a mere observation and affords no answer to the charge if the recent discovery is a real discovery of the true intention of the Legislature. Lindley, L.J. has already given a careful analysis of the Act. I think it correct, and shall not repeat it. The Act contains no definition of the word "place." The absence of any such definition I take to be intentional. The Legislature meant, in my opinion, each case to be dealt with on its own facts, and it seems to me that we ought not to attempt to define what the Legislature has purposely left undefined. The enactments certainly go beyond the preamble. The view I take is this: the Legislature having before it the leading idea of suppressing the opening of betting houses or offices and the receiving of money in advance by the owners of such houses or offices or by other persons acting on their behalf, foresaw the necessity of employing in the enactments other words which would prevent evasion and subterfuges, and has framed the enactment accordingly: see the judgment of Lush, J. in *Haigh v. The Town Council of Sheffield* (L. Rep. 10 Q. B. 102 at p. 109). But, after careful examination of the sections, I am unable to find any sufficiently disclosed intention to enlarge the general ambit of the Act. The business of a bookmaker is not prohibited; by itself it is still lawful. Dropping for a moment but not forgetting the amplifying words, the gist of the offence aimed at appears to me to be the using of a house, room, or office, or other place, as presently explained, for the purpose of betting with persons resorting thereto. In the enactments the general and ambiguous word "place" is always preceded by the words "house, office, room," or "house, room, office," and it has sometimes the word "other" prefixed and sometimes not. Nothing turns on the omission of the word "other" where that omission occurs. The leading idea and the standard descriptions are to be found in the words "house, room, and office." The place is something of the same kind taken in connection with the user. The ordinary rule of construction, sometimes called *ejusdem generis*, sometimes *noscitur a sociis*, applies. "Place" must mean something of the same kind; something which conforms to the leading idea conveyed by the words with which it is associated. Plainly, the inclosure is not a "house," nor a "room" nor an "office." The word "office" in this connection appears to me to have the most comprehensive meaning and the largest import of the three unambiguous words. What are the characteristics, the usual fittings up, or accessories, of an office? A desk, a table, a chair, and things of that description. Now, in this

inclosure the bookmakers have no apparatus of that kind. There are certain structures which in my opinion fall within the Act wherever set up or found; a booth, a tent, and an umbrella fixed in the ground by a stake, which is but a kind of tent, are all within the meaning of "place" when used for the purposes indicated. A movable structure on wheels, such as those in which merchants conduct their business of loading and unloading ships at Liverpool, mentioned by Martin, B. in *Shaw v. Morley* (19 L. T. Rep. 15; L. Rep. 3 Ex. 137), is a good example of an office or place within the Act. The fact of such an office or place being set up and used by the bookmaker on a racecourse would not take it out of the Act; a racecourse is nowhere mentioned in it. Now, it was pressed upon us by Mr. Asquith in his able argument that the bookmakers do in fact use this inclosure as the place where they separately carry on their betting business as described in the particulars. But the question is whether they use the inclosure as a betting-house, room, or office, or as a place conformable to the leading idea conveyed by those standard words. I think that they do not. The inclosure is visited by 2000 persons on attractive race-days, of whom 200 are bookmakers. The bookmakers and their clerks, and the general public, are all admitted to the inclosure without distinction, and on the same terms. Many of the general public bet with the bookmakers; some do not bet with them at all, but go merely to see the races or to meet their friends and acquaintances. The bookmakers have no special right or privilege within the inclosure. No particular part of the inclosure is assigned or allotted to them. They carry on their betting in competition. Although each bookmaker may generally be found near the same place, he has no special right to the place which he occupies temporarily. If he moves from it, as he does, any member of the general public may take the place he has quitted. He has no fixed or ascertained place within the inclosure; he cannot claim any particular station. He has no individual control over the place he occupies beyond such as everyone else within the inclosure has over the place he occupies for the time being. The term "spot," was employed in the argument. I discard the words altogether; it is not found in the statute. Some of the principal authorities have already been stated and dealt with at length. I shall confine myself to expressing my opinion upon them. No doubt there has been considerable difference in the judicial opinions expressed on the construction of this Act. The Act is so drawn as almost to invite difference of opinion, certainly so as to give rise to it. I think that the following cases were rightly decided, viz.: *Shaw v. Morley* in 1868 (19 L. T. Rep. 15; L. Rep. 3 Ex. 137); *Bows v. Fenwick* in 1874 (30 L. T. Rep. 524; L. Rep. 9 C. P. 339); and *Snow v. Hill* in 1885 (52 L. T. Rep. 859; 14 Q. B. Div. 588). From *Doggett v. Catterns* in 1864 (12 L. T. Rep. 355; 17 C. B. N. S. 669; 19 C. B. N. S. 765), in which there was much diver-

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gence of opinion, I am unable to obtain any safe guidance. I think that *Eastwood v. Miller* in 1874 (30 L. T. Rep. 716; L. Rep. 9 Q. B. 440) and *Haigh v. The Town Council of Sheffield* in 1874 (L. Rep. 10 Q. B. 102) carried the statute beyond its true limit. I am prepared to go as far as *Bows v. Fenwick* (*ubi sup.*), the case of the umbrella with a stake. Possibly *Gallaway v. Maries* in 1881 (45 L. T. Rep. 763; 8 Q. B. Div. 275), the case of the box simply, may be supported on the same grounds, but it is open to question. I concur with Smith, L.J., in what he has said about the opinions of eight judges. Their method of reasoning on the statute is inconsistent with the decision in *Hawke v. Dunn* (76 L. T. Rep. 355; (1897) 1 Q. B. 579). My conclusion is that the construction put upon the Act by the plaintiff's counsel does not give the proper effect to the dominant words "house, room, or office," and, further, I am satisfied that the Legislature has not manifested in the enacting part of the Act a clear intention of declaring illegal such an inclosure as this is, and used as it is used. For the above reasons I think that the appeal ought to be allowed, and for the same reasons that the decision in *Hawke v. Dunn* (*ubi sup.*) ought to be overruled.

*Appeal allowed.*

Solicitors for the plaintiff, *Le Brasseur and Oakley*.

Solicitors for the defendants, *Peachey and Son*, for *Arthur Cheese*.

## QUEEN'S BENCH DIVISION.

*Dec. 18, 1896, and March 13, 1897.*

(Before HAWKINS, CAVE, WILLS, WRIGHT, and KENNEDY, JJ.)

McINANY (app.) v. HILDRETH (resp.) (a)

*Gaming—Betting—Using a place for purposes of betting—What is a place* — Betting Act, 1853 (16 & 17 Vict. c. 19), ss. 1 and 3.

*The appellant, a professional bookmaker, on the day of a certain horse race, stationed himself at a particular spot on a piece of ground called the Pit Heap, with his back against the hoarding of a skittle alley, and there made bets on the race with all who chose to bet with him. The Pit Heap was a vacant and uninclosed space, to which the public were allowed free and*

(a) Reported by G. H. GRANT, Esq., Barrister-at-Law.

*unrestricted access from various sides, and on the day in question a large crowd were assembled there. The appellant remained all the time on the same spot, but it was not in any way circumscribed or fenced in or otherwise distinguished :—*

*Held, that the appellant was using a place for the purpose of betting with persons resorting thereto within the meaning of sect. 3 of the Betting Act, 1853. (a)*

CASE stated by Justices of Yarrow.

The appellant, Peter McNany, was charged at the Police-court, Jarrow, on the information of the respondent, George Hildreth, an inspector of police, with unlawfully using a certain place in the borough called the Pit Heap, for the purpose of betting on horse races with persons resorting thereto, contrary to sect. 3 of the Betting Houses Act, 1853.

The facts which were proved at the hearing are fully stated in the judgment of the Court.

The justices were of opinion that the spot where the appellant stood was a clear, ascertained, and well-defined place used by the appellant for the purpose of betting on horse races, and they accordingly convicted him.

The question on which the opinion of the Court was desired was, whether the justices came to a correct determination in point of law.

*Clarke Hall* for the appellant, and *Simey* for the respondent, cited the authorities which are dealt with in the judgment of the Court, and in the judgment in *Hawke v. Dunn* (76 L. T. Rep. 355).

HAWKINS, J. read the following judgment, in which the other judges concurred:—The respondent, an inspector of police in the borough of Jarrow, charged the appellant with using a certain place in that borough, called the Pit Heap, for the purpose of betting with persons resorting thereto upon contingencies concerning horse races, contrary to sect. 3 of the Betting House Act, 1853. Nine justices for the said borough, before whom the charge came on for hearing, convicted the appellant, but on his application they stated this case for our opinion, the question being whether in law they were justified in convicting him. The Pit Heap is a piece of private, though at present vacant, ground in the borough of Jarrow, comprising, according to the plan, about one-eighth of an acre of land. To a great extent it is bounded on the north by the Theatre of Varieties; on the east by a skittle alley; on the west by a row of posts and a road; and on the south by a public-house and a shooting gallery. Although there is an owner and a tenant of it, and it is occasionally allowed to be occupied by shows for which rents are paid, the public have been permitted and allowed by such

(a) This decision was delivered previously to the decision of the Court of Appeal in *Powell v. The Kempton Park Racecourse Company Limited*, ante, p. 561, subject to which it must therefore be read.

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owner and occupier free and easy access to it, and to resort thereto. On the day in question no one was in actual personal charge or superintendence of it. On the 24th day of March, 1896, the Lincolnshire Handicap was run at Lincoln. About half-past 10 a.m. a crowd, consisting of 100 persons, began to assemble on the Pit Heap, some reading sporting papers, and others discussing racing matters. About 11 a.m. the appellant came on to the ground, and at once stationed himself at a point on it, with his back against the hoarding of the skittle alley. The spot where the appellant stood was found by the justices to be a clear, ascertained, fixed, and well-defined place. With the exception of a short interval of ten minutes the appellant remained on the same spot until 2.45 p.m. During that time many of the men comprising the crowd came up to him and gave him money, and as they did so he on each occasion made an entry in what was, in fact, his betting book. At 2.45 p.m. the police, who had been watching his action, interfered, and took from him the betting book containing numerous entries of bets. One page of it, headed "The Lincolnshire Handicap 1896," contained among others an entry "16s.—2s. Osterman." This interpreted means that he had laid Osterman, who was identified as one of the persons who had paid him money, 16s. to 2s. against a horse about to run in the race. At the hearing before the magistrates it was admitted that the appellant was a professional bookmaker; that on the day and at the place above mentioned he was making bets on the Lincolnshire Handicap. It was also proved that other betting men, following their avocations and acting in a similar manner, were on the ground. The magistrates found that the spot where the appellant stood was a "place," and that it was used by him for the purpose of betting on horse races with those resorting thereto within the meaning of the 3rd section of the Act. The question for us was whether the justices came to a correct determination in law. For the appellant it was contended that the spot occupied by him was not a place within the meaning of the Act, and that even if it was he did not use it illegally, because it was not shown that it had been used for a similar purpose before the day in question. I am of opinion that this latter point is untenable, there being no authority to support it, the case which was cited for that purpose having been decided upon a statute relating to cockfighting totally differing from the present. On the argument before us, all the authorities bearing on the subject of what is a place were fully discussed, but, having dealt with them in my judgment in *Hawke v. Dunn*, I do not find it necessary now to repeat all that I there said. *Doggett v. Catterns* (12 L. T. Rep. 355; 17 C. B. N. S. 669) was strongly relied on for the appellant, but the decision in that case turned not upon the question whether the spot under the trees was a place under sect. 3, but upon the fact that it was not a place owned or occupied by the defendant under sects. 4 and 5. If the defen-



dant in that case had been prosecuted under sect. 3 for *using* the spot for the purposes forbidden by sects. 1 and 3, it is clear that six of the nine judges by whom the case was heard would have held him responsible, but, sued as he was, in a civil action under sect. 5, for a return of the deposit, he could not be made liable without proof that he was either owner or occupier of the place where the deposit was received by him. Such proof was not, and could not from the nature of things, have been forthcoming, and so the action failed. But no such proof is necessary in the case of an information to recover a penalty under sect. 3 for using a place for the forbidden purposes. I never could understand the reasoning of those who urged that the spot under the clump of trees could not be deemed to be a place. The locality was fixed at and under the trees; it was limited to the spot overshadowed by their branches. People, in fact, resorted to it for the purpose of betting on horse races, and the bookmaker went there to meet and bet with them, and stayed there to bet with them upon the ready-money system. What then was wanting to constitute it a place? The fact that the man had no authority to use it was immaterial. He could not have sheltered himself by urging his trespass as an offence, for the penalty attaches to the person using a place, whether such place is so used with or without the leave of the owner or occupier. But I need not further elaborate the matter, for there is direct authority to justify us in dealing with it as even without authority we should have done. In the case of *Liddell v. Lofthouse* (74 L. T. Rep. 139; (1896) 1 Q. B. 295), a bookmaker, pursuing his calling and betting with persons resorting to the spot on which he located himself, received deposits on such bets. Lindley and Kay, L.JJ., sitting as a Divisional Court, held that to be a place. I cannot help thinking that they must and would have come to the same conclusion if the stage had not been there. Indeed, Kay, L.J. said: "As it seems to me, if a man were to use the ground at the foot of the statue at Charing Cross for the purpose of habitually betting with persons resorting to him there, that, although the space used was entirely undefined, would be a place within the meaning of the statute. The truth is that some little good sense must be imported into the consideration of these cases. In this case the appellant evidently went to that particular spot on the Pit Heap to bet with those who had been brought together there in the expectation of finding him there to bet with. He stood on the spot with his back to the skittle alley, and so used it for hours. He was as conspicuous as if he had a sentry box to stand in. Would it have made any difference if he had stood on a box, or interposed a layer of wood between his feet and the ground, or had sat on a high porter's chair, carrying on that kind of betting which most of all the Legislature meant to suppress in every place where it was or could be publicly carried on? Can anybody seriously suppose the Legislature meant to exclude from the operation of the Act

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such betting on such a place? Or that its being or not being a place should depend on whether the betting man was or was not hemmed in by a couple of pieces of wood? Or had a gaudy umbrella over his head? Or stood on a stool or box or was or was not a trespasser on the place he was so using? provided always that the user for the time being was of a locality to which persons could properly be said to be resorting, and where he could carry on his operations with those persons. On principle, confirmed by the authorities cited, I think the magistrates were right in their decision, and this conviction ought to be affirmed with costs. *Appeal dismissed.*

Solicitor for appellant, *P. Robinson*, for *E. Clarke*, Newcastle-on-Tyne.

Solicitor for respondent, *James Kirkley*, for *J. Oswald Davidson*, Jarrow.

## CHANCERY DIVISION.

*Friday, May 21, 1897.*

(Before STIRLING, J.)

JENKS v. DITTON. (a)

*Prisoner—Witness—Habeas corpus—Order on governor of prison.*

*Where a plaintiff moved ex parte for an order on the governor of a prison to produce a prisoner in court at the trial, but the time of hearing was uncertain, the Court made the order in the form given in Seton, 5th edit., p. 89, but directed that the same should not be drawn up until the case was in the paper for trial.*

**I**N this case a person who was in prison was required to attend the Court to give evidence at the hearing of the action, and a motion was now made *ex parte* on behalf of the plaintiffs for an order on the governor of the prison accordingly.

*P. S. Stokes* for the motion.—The practice seems to be differently stated in the Annual Practice and in Seton. In the Annual Practice, Order XXXVI., r. 35, it is stated that “an order for *habeas corpus ad testificandum* to bring up a prisoner in custody on civil process is obtained in the Chancery Division on motion or petition of course. . . . If the witness is a prisoner under

(a) Reported by A. W. CHASTER, Esq., Barrister-at-Law.

a criminal charge, application is made *ex parte* to a judge under 16 & 17 Vict. c. 80, s. 8, on an affidavit." In Seton (5th edit.), however, at p. 89, a form of order is given thus: "Upon motion, &c. . . . let the governor of Her Majesty's prison at produce the said before Mr. Justice in his Lordship's court," &c.; and at p. 94 it is stated that, "in order to bring up a witness who is in prison, it is not the proper course to move for a writ of *habeas corpus*, but the visiting justices require an order on the governor of the prison who will comply with it." The usual affidavit has been filed, but there is a further difficulty on account of the uncertainty as to the time of trial.

STIRLING, J., after conferring with the registrar, said:—The order will go in the form which is given in Seton, but it should not be drawn up until the case is in the paper for trial.

Solicitor, *J. Amery Parkes*.

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## QUEEN'S BENCH DIVISION.

Thursday, May 6, 1897.

(Before HAWKINS and WRIGHT, JJ.)

DERBYSHIRE (app.) v. HOULISTON (resp.). (a)

*Adulteration of food—False warranty—Prosecution for giving—Guilty intent—Necessity of showing—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 27.*

*To constitute the offence under sect. 27 of the Sale of Food and Drugs Act, 1875, of giving a false warranty in writing to a purchaser in respect of an article of food, guilty knowledge is necessary, and to convict a person under the section it is necessary to show that such person when he gave the warranty knew that the warranty was false.*

CASE stated by the stipendiary magistrate for the city of Manchester.

On the 13th and 20th Nov. 1896, upon the information and complaint of the respondent, an inspector of nuisances for the city of Manchester, the appellant appeared before the magistrate upon a summons for having, on the 8th day of September, 1896, at the city of Manchester, given a false warranty in writing to a

(a) Reported by W. W. ORR, Esq., Barrister-at-Law.

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purchaser named Hopkins in respect of an article of food then sold by him to Hopkins and subsequently sold by Hopkins to the respondent, such article of food not being of the nature, substance and quality of the article demanded by the respondent.

The facts were these :

The respondent on the 16th day of September, 1896, went to the shop of one Hopkins, a retail grocer in Manchester. On the counter in the shop was a quantity of butter marked "Pure butter 10d.," and the respondent pointing to this butter asked for and was supplied with a pound of the butter.

One-third part of this butter was analysed by the public analyst, who gave his certificate, and upon the hearing proved that the butter in question was adulterated, containing 23 per cent of water.

Hopkins had previously, on the 8th day of September, 1896, purchased the butter from the appellant as the same in nature, substance, and quality as that demanded of him by the respondent, and with a written warranty to that effect, namely, "Warranted pure butter." Hopkins had no reason to believe when he sold it that the article was otherwise, and he sold it in the same state as when he purchased it.

A summons was taken out against Hopkins under sect. 6 of the Sale of Food and Drugs Act, 1875, but was dismissed upon his proving (under sect. 25) that he had purchased the butter from the appellant with a like warranty, and that he sold it in the same state as when he purchased it.

The present summons was then taken out against the appellant under sect. 27, for having given a false warranty in writing to Hopkins upon the sale of the butter to him.

The appellant had purchased the butter on the 22nd day of August, 1896, from a merchant in Limerick as the same in nature, substance, and quality as that so sold by the appellant to Hopkins and with a written warranty to that effect, namely, "Guaranteed pure Irish butter."

It was contended for the appellant : (1) That it was necessary to prove that the appellant at the time when he gave to Hopkins the warranty in question, knew that it was false. (2) That on the facts above stated the appellant was entitled to be discharged from the prosecution by virtue of sect. 25 of the Act.

It was contended on behalf of the respondent : (1) That it was not necessary to prove that the appellant at the time when he gave the warranty in question to Hopkins knew that it was false. (2) That on the facts stated the appellant was not entitled to the protection afforded by sect. 25.

The magistrate was of opinion that the contentions of the respondent were correct in law and convicted the appellant, imposing a penalty of 5*l.* and costs.

The questions for the opinion of the Court were : (1) Whether it was necessary to prove guilty knowledge on the part of the

appellant in giving the warranty to Hopkins. (2) Whether the appellant upon the facts above stated was entitled to be discharged from the prosecution by virtue of sect. 25 of the Act.

The Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63) provides :

Sect. 27. Any person who shall forge, or shall utter, knowing it to be forged for the purposes of this Act, any certificate or any writing purporting to contain a warranty, shall be guilty of a misdemeanour and be punishable on conviction by imprisonment for a term not exceeding two years with hard labour; Every person who shall wilfully apply to an article of food, or a drug, in any proceedings under this Act, a certificate or warranty given in relation to any other article or drug, shall be guilty of an offence under this Act, and be liable to a penalty not exceeding twenty pounds; Every person who shall give a false warranty in writing to any purchaser in respect of an article of food or a drug, sold by him as principal or agent, shall be guilty of an offence under this Act, and be liable to a penalty not exceeding twenty pounds; And every person who shall wilfully give a label with any article sold by him which shall falsely describe the article sold, shall be guilty of an offence under this Act, and be liable to a penalty not exceeding twenty pounds.

Sect. 25. If the defendant in any prosecution under this Act prove to the satisfaction of the justices or court that he had purchased the article in question as the same in nature, substance, and quality as that demanded of him by the prosecutor, and with a written warranty to that effect, that he had no reason to believe at the time when he sold it that the article was otherwise, and that he sold it in the same state as when he purchased it, he shall be discharged from the prosecution, &c.

*C. A. Russell, Q.C. (F. H. Mellor with him) for the appellant.*—It is admitted that the appellant bought the butter with the same warranty as he himself gave to Hopkins, and that he did so honestly believing it to be true. That being so, he ought not to have been convicted under sect. 27, as that section from its very terms imports that there must be a guilty knowledge. Giving a “false warranty” in that section means giving a false warranty knowing it to be false, and it never could have been the intention of the Legislature that a person who honestly gave a warranty believing it to be true should be rendered liable to a penalty for what is really and substantially a criminal offence. It has no doubt been held that the absence of guilty knowledge is no defence to a charge under sect. 6 (*Betts v. Armstead*, 58 L. T. Rep. 811; 20 Q. B. Div. 771); but the reason why that was so held was, as stated by Cave, J. “that the word ‘knowingly’ was intentionally omitted from sect. 6.” Under sect. 27 guilty knowledge ought to be held to be essential. That being so, the appellant was entitled to be acquitted, and this conviction ought to be quashed. Under sect. 25 also the appellant ought to have been acquitted. He also referred to *Pain v. Boughtwood* (62 L. T. Rep. 284; 24 Q. B. Div. 353); and *Dyke v. Gower* (65 L. T. Rep. 760; (1899) 1 Q. B. 220.)

*Lawson Walton, Q.C. (R. Brown with him) for the respondent.*—Looking at sect. 27, with regard to the first clause of the section guilty knowledge is distinctly stated to be necessary; with regard to the second clause the word “wilfully” is used, and the act must be done wilfully to bring a case within the clause; but when we come to the next clause, as to giving a false warranty, the words “knowingly” or “wilfully” are omitted, and, as we contend, are intentionally omitted, so as to

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bring a case within that clause without the act being done knowingly or wilfully; and in the very next clause the word "wilfully" is again used, thereby showing that, when the Legislature intended to insert the word "knowingly" or the word "wilfully" they have done so. It is almost impossible to imagine that the Legislature intended to import the word "wilfully" into this clause of the section, seeing that in the other clauses when such was the intention the word is expressly introduced. In the very next clause of the section the word "false" is used with an innocent collocation, as false description of a label there does not refer to the description being wilfully given, but merely means a description which is false in point of fact. The word "false" here simply means "untrue," and if the warranty is in fact a false, that is, an untrue, warranty, then it is unnecessary to inquire into the state of mind of the person giving it; and the offence is committed when you prove first, a warranty in writing, and, secondly, a warranty in writing which is an untrue warranty or a false warranty in point of fact. In all these statutes the object of the Legislature is that the public must be protected, and if one of the parties has to be sacrificed the seller must be sacrificed in order to protect the purchaser. Words will not be implied in the definition of an offence under these Acts so as to relieve a party merely on the ground that he has no guilty knowledge. "Knowingly" is not to be imported in sect. 6: (*Betts v. Armstead, ubi sup.*). If the charge be for "altering" under sect. 9, the Court will not import the words "altered with his knowledge," but the seller may be convicted although there is no *mens rea*: *Pain v. Boughtwood, ubi sup.*; *Dyke v. Gower, ubi sup.*; *Spiers and Pond v. Bennett*, 74 L. T. Rep. 697; (1896) 2 Q. B. 65. These were cases under sect. 9, but they show that in a charge under sect. 27 for giving a false warranty, the words "false to his knowledge" ought not to be imported.

*O. A. Russell*, Q.C., in reply, was stopped.

HAWKINS, J.—The sole question we have to determine in this case is whether the appellant in the present proceeding was rightfully convicted or not under sect. 27, sub-sect. 2. I am of opinion that he was not liable to conviction, and ought not on the evidence to have been convicted. I am not going to discuss sect. 25, though that section does apply to written warranties, and shows under what circumstances they may be a defence against any proceeding for selling adulterated food or drugs; but I confine my attention simply to this: What is the meaning of this section—sect. 27—under which the appellant has been convicted? The section begins with this, punishment "for forging certificate of warranty"; then for "wilful misapplication of warranty"; then for "false warranty"; then for "false label." [His Lordship read the section and proceeded:] It is quite clear with regard to the first that the *scienter* that the document was forged or was false was required to be proved. Then comes the first sub-section as to wilful misapplication of warranty,

and it is quite clear that the true construction of that sub-section is that if the person shall wilfully—that is, with the knowledge that he is doing it wrongfully—do the act, that is made an offence. Then, passing over for the moment the second sub-section, which is the one now in question, it is quite obvious that the third sub-section as to giving a false label, imports a guilty knowledge, and—although it was rather contended to the contrary—that under this sub-section, if a man gives a label which in point of fact does not describe the article to which it is applied, he cannot be convicted and fined 20*l.*, unless it is shown that he wilfully did it. It was endeavoured to be argued that if he did wilfully hand the paper or label, or affix the label to the article he supplied, he would commit the offence, and that the word “wilful” is to be construed as applied only, and intended to be applied only, to the act of affixing the label. But I do not take that view. I think the word “wilfully” in that sub-section means wilfully affixing a label which falsely describes the article sold, and I am satisfied that no man ought to be or could be legally convicted of giving a false description unless it is shown that he knew it to be false. If he knew it to be false, and knowing it to be false affixed the label on the article, he would be guilty of having wilfully done it. That brings me back to the immediately preceding sub-section, which is the one we have to construe, and the only question we have to ask ourselves is what is the true construction to be put upon the words “false warranty.” Does that mean that a person is rendered liable by giving a false warranty, honestly believing it to be true and under circumstances which afford a reasonable ground for believing it to be true; that is to say, supposing he has received it from the man from whom he bought the goods, and that he knew nothing contrary to its truth? Ought it to be construed as being intended to apply, so that the man should be liable to be fined 20*l.* only if he knowingly gave a false warranty, or is it to be applied, as is contended for on behalf of the prosecution, to a case where there was no knowledge that the warranty was false, but where, on the contrary, everything in the case would reasonably lead to the belief which the man entertained that the warranty was true? It seems to me to be a monstrous proposition to say that a man could be convicted and fined for that which is really and seriously a criminal offence—that is, knowingly giving a false warranty to an article—and that he should be liable to a penalty of 20*l.*, even though he believed the warranty to be absolutely true. There are some cases, no doubt, in which guilty knowledge is not necessary to constitute a criminal offence, such as under the Explosive Substances Acts, which say that a man shall be presumed to have a knowledge of the purposes for which an explosive substance is intended to be used, unless he proves to the contrary, or that he had it in his possession for a reasonable purpose. There is nothing of that kind in the present case. The principle upon which I think the criminal law should

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be administered is this: If the Legislature intended to punish a man, that ought to be clearly expressed in the section; and when I find that this one sub-section is intermixed with three others which beyond all question require proof of the falseness of the certificate or label, and that the words used in the sub-section are such as I have read, I have come to the conclusion that this is the mode in which the magistrate ought to have read this section, and as he has taken a contrary view in this case I think the conviction ought to be quashed.

WRIGHT, J.—I am of the same opinion. In the case of *Sherras v. De Rutzen* (72 L. T. Rep. 889; 1 Q. B. 918), I collected most of the cases bearing on the subject, and I refer to that case, not as an authority, but simply to save the trouble of referring to those cases again. I think those cases establish the proposition that, as a rule, there is a presumption that the *mens rea*—that is, the evil intention or the knowledge of the wrongfulness of the act—is an essential ingredient in every offence, but that that presumption may be displaced either by the clear language of the Act or by the subject matter with which it deals. It has long been established that under this Act, under sects. 6 and 9, a guilty mind is not a necessary ingredient of an offence, but it does not at all follow that the same rule applies under sect. 27, and we have to look at the language of sect. 27 to see whether it does apply. Sect. 27, as a whole, appears to be dealing with really criminal matters. As my brother has pointed out, all the offences which it creates, unless it be this one, are offences which, by the very language of the Act require, in order to constitute them, a guilty mind. The first is called forgery; the second is forgery, and is expressly required to be wilfully done; the fourth involves guilty knowledge—wilfully giving a label with a false description of the article; and the remaining one is the one now in question, that is, giving a false warranty in writing. It seems to me that first of all the presumption is that guilty knowledge is required; and, secondly, that that presumption is strengthened in this case by the words “false warranty.” When you are dealing with a criminal matter, a matter for which a man may be liable to conviction, “false warranty,” to my mind, imports and implies that the person must have a knowledge that the warranty is false. Thirdly, I think this presumption is strengthened by the rule *Noscitur a sociis* when you find it embedded in the same section amongst other offences, all of which require a guilty knowledge. I think that, unless the language imports a contrast, it ought rather to be taken as importing a similarity in that respect, and certainly the words “false warranty” do not import any contrast to the words which imply that the guilty mind is necessary. On the contrary, the words “false warranty,” instead of implying a contrast, really import another form of guilty mind. We do not know what the intention of the framers of the section may have been, and we need not consider them, as we have to construe the

section according to the ordinary rules of construction which have to be applied to a criminal act.

*Appeal allowed. Conviction quashed.*

Solicitors for the appellant, *Crowders and Vizard*, for *Hockin, Raby, and Beckton*, Manchester.

Solicitors for the respondent, *Austin and Austin*, for *Thomas Hudson*, Manchester.

DERBYSHIRE  
v.  
HOULISTON.

1897.

*Adulteration  
of food—  
False war-  
ranty—Mens  
rea—Sale  
of Food and  
Drugs Act,  
1875—38 & 39  
Vict. c. 63,  
s. 27.*

## QUEEN'S BENCH DIVISION.

*Thursday, July 8, 1896.*

(Before CAVE and RIDLEY, JJ.)

HEYWOOD v. WHITEHEAD. (a)

*Adulteration — Milk — Knowledge of purchaser — Costs against magistrates—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 6.*

*W. was charged before justices with selling for new milk an article not of the nature, substance, and quality demanded, contrary to sect. 6 of the Food and Drugs Act, 1875. A sergeant of police, acting under H.'s orders, who was an inspector under the Act, purchased the milk from W., who, when he was asked for new milk, sold skimmed, and charged a penny a pint, the usual price for skimmed milk. The justices differed, one being of the opinion that only a penny a pint being asked, the purchaser must have been aware it was skimmed milk he was buying:—*

*Held, that the knowledge of the purchaser was immaterial, and case remitted to the bench to convict.*

*The respondent W. did not appear, but the magistrates did:—*

*Held, that costs in such a case could be given against them.*

**T**HIS was a case stated by two of Her Majesty's justices of the peace for the county of Lancaster, acting in and for the division of Oldham.

At a petty sessions held at Royton, in the county of Lancaster, on the 10th day of Feb. 1897, a certain information and complaint, preferred by Thomas Heywood, a superintendent of police for the county of Lancaster, acting for the division of Oldham (hereinafter called the appellant), against Joseph Traviss Whitehead

(a) Reported by W. DE B. HERBERT, Esq., Barrister-at-Law.

HEYWOOD (hereinafter called the respondent), was heard and determined before us on the 10th day of Feb. 1897, in the presence and hearing of the appellant and respondent, and dismissed upon the ground hereinafter stated.

*Adulteration  
of food—*

*Skimmed milk*

*— Purchaser's*

*knowledge—*

*Practice—*

*Costs— Order*

*on magis-*

*trates—Sale*

*of Food and*

*Drugs Act,*

*1875—38 & 39*

*Vict. c. 63,*

*s. 6.*

The information and complaint were as follows :

That on the 18th day of January, 1897, at the township of Royton, in the division of Oldham, in the county of Lancaster, one Joseph Thomas Morgan did demand of and from the respondent, as and for a sale by the respondent to him the said Joseph Thomas Morgan, a certain article of food, to wit, one pint of new milk, and that the respondent did then and there unlawfully and wilfully sell to him the said Joseph Thomas Morgan, and to his prejudice, as and for such article of food, an article of food which was not of the nature, substance, and quality of the article of food so demanded by the said Joseph Thomas Morgan as such purchaser as aforesaid. The analysis showed that it contained parts as under; 1.74 per cent. fat, 9.10 per cent. other solids—total solids, 10.84 per cent.; and that it had been deprived of upwards of one-third of its cream contrary to the form of the statute in such case made and provided.

The appellant, being dissatisfied upon the hearing of the information and complaint as being erroneous in point of law, applied to us to state and sign a case setting forth the facts and grounds of such our determination.

Now, therefore, we, the justices, in compliance with the application and the provisions of the statutes, do hereby state and sign the following case :

1. Upon the hearing of the information and complaint, the following facts were proved or admitted :

2. The respondent is a farmer, and carries on business at Hey Hill, in the township of Crompton.

3. The appellant is an inspector of food and drugs for the Oldham division of the county of Lancaster, and as such inspector he instructed Police-Sergeant Morgan and Police-Constable Morris, on the 18th day of January, 1897, to proceed to Royton and procure samples of new milk for analysis by the public analyst. They accordingly proceeded to Royton, and whilst in Sandy-lane met the respondent, who was selling milk. He had two cans of milk, one on his right hand and the other on his left. The sergeant asked the respondent for a pint of new milk from the can on his right. The respondent replied "That is skim milk in that and new in this" (pointing to the can on his left). The sergeant then said: "I want new milk; so I'll have a pint out of that" (pointing to the can on his left). The respondent served him without any comment, and charged a penny for it which he paid. The sergeant then read the usual statement to the respondent, which is as follows :

I have been instructed by Mr. Superintendent Heywood, the inspector for food and drugs in the district, to purchase this sample of new milk for analysis by the public analyst. If you desire it I will now divide it into three parts, one of which I shall leave with you, one I shall take or send to the public analyst, for analysis, and the other I shall keep, but if you do not desire it dividing, I shall send up the whole in your presence. What do you elect to do ?

The respondent replied, "I'll have a portion." The sergeant then proceeded to divide the sample into three parts, and was

sealing them up and putting on the labels, when the respondent exclaimed, "Oh! I didn't know you. That is skim milk; I have no new."

The sergeant was asked by Mr. Butterworth, the presiding justice, if he expected to get new milk for a penny a pint. The sergeant replied that he asked for new milk, and was prepared to pay whatever the respondent charged for it.

The sergeant's evidence was corroborated by Police-constable Morris.

Margaret Ann Sandring was called by the appellant, and she stated that she had bought milk from the respondent during the last five-and-a-half years, and always paid him three-half-pence a pint for it.

4. The respondent did not adduce evidence.

5. The appellant gave evidence, and proved that he was an inspector of food and drugs for the Oldham division of the county of Lancaster, and produced the certificate of the analyst.

6. On behalf of the appellant, it was contended that it was new milk which was demanded, and sold to the sergeant and constable by the respondent, and that sect. 6 of the Food and Drugs Act, 1875, applied, and he asked for a conviction against the respondent.

On behalf of the respondent it was contended that it was skimmed milk and not new milk which was sold to the police-sergeant and constable, and that the police-sergeant must have had knowledge of this, in that he paid only one penny a pint for it, and that sect. 6 of the Food and Drugs Act, 1875, did not apply.

7. The justices were not agreed. One of them was of opinion, seeing that the respondent only asked one penny a pint for the milk, the sergeant must have known that he was buying skimmed milk and not new milk, and therefore declined to convict. The other justice was of opinion that the state of knowledge of the sergeant at the time when he paid for the milk was not material, he having asked for new milk and obtained the milk before the question of price was mentioned, and considered the respondent ought to be convicted. As the Bench could not agree the case was dismissed.

When the penny was paid for the pint of milk Joseph Travis Whitehead, the respondent, was, in the opinion of the magistrate who recommended the dismissal of the case, satisfied that he was selling and was paid for skimmed milk, as a penny per pint was the regular selling price of the skimmed milk, and the magistrate believed he was innocent of trying to deceive the two officers.

8. The question of law on the above statement for the opinion of this Court is: Whether the determination by us the justices dismissing the complaint, was, under the circumstances set out, erroneous.

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v.  
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*Adulteration  
of food—  
Skimmed milk  
—Purchaser's  
knowledge—  
Practice—  
Costs—Order  
on magis-  
trates—Sale  
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Drugs Act,  
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Vict. c. 63,  
s. 6.*

HEYWOOD v. WHITEHEAD. 1897.  
*Adulteration of food—Skimmed milk—Purchaser's knowledge—Practice—Costs—Order on magistrates—Sale of Food and Drugs Act, 1875—38 & 39 Vict. c. 63, s. 6.*

By sect. 6 of the Food and Drugs Act, 1875:  
 No person shall sell to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance, and quality demanded by the purchaser under a penalty not exceeding twenty pounds.

*G. Clay* for the appellant.  
*J. H. Butterworth* for the magistrates.

The respondent did not appear.

CAVE, J.—The case is too clear for argument, and must go back to the magistrates to convict. If we were to allow defences like this there would never be any convictions.

RIDLEY, J.—I am of the same opinion.

*Clay* asked for costs against the magistrates.

CAVE, J.—Yes. As they have appeared and contested the case, you are entitled.

Solicitors for the appellant, *Ridsdale and Son*, for *Hulton*, Oldham.

Solicitor for the magistrates, *J. E. Lees*, Oldham.

## CROWN CASES RESERVED.

*Saturday, May 15.*

(Before Lord RUSSELL, C.J., HAWKINS, GRANTHAM, WRIGHT, and COLLINS, JJ.)

REG. v. DAVIES. (a)

*Unlawful gaming—Using house or room for purpose of—Unlawful game—What is, a question of law—17 & 18 Vict. c. 38, s. 4; 42 & 43 Vict. c. 49, s. 17.*

*A person does not commit the offence of opening, keeping, or using a house or room for the purpose of unlawful gaming, if he and his friends merely occasionally and casually play games therein, even if such games be unlawful.*

*The question whether a game is or is not unlawful, is a question of law on which a specific direction should be given to the jury.*

CASE stated by the chairman of the Cheshire Quarter Sessions.

The defendant, James Davies, was charged before a Court of

(a) Reported by A. A. BETHUNE, Esq., Barrister-at-Law.

Summary Jurisdiction, with an offence under sect. 4 of the Gaming Houses Act, 1854 (17 & 18 Vict. c. 38), and William Wild and Thomas Baker, with aiding and abetting him in the commission of the offence. They claimed in accordance with the provisions of sect. 17 of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), to be tried by a jury, and an indictment was accordingly preferred against all three defendants. The first and fifteenth counts charged Davies with being the occupier of a certain house and room, and unlawfully opening such house and room for the purpose of unlawfully gaming; and the third count charged that he, being the occupier of a certain house, did unlawfully use the said house for the purpose of unlawful gaming being carried on therein. The seventh count charged him with so using a room in the house. Other counts charged Wild and Baker with aiding and abetting Davies, but the jury acquitted both these defendants.

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v.  
DAVIES.  
—  
1897.

Gaming and  
betting—  
Using house  
or room for—  
Casual  
gaming  
amongst  
friends—  
17 & 18 Vict.  
c. 38, s. 4;  
42 & 43 Vict.  
c. 49, s. 17.

The facts stated in the case were as follows :

Wild was a publican and kept the Grove Inn, Stockport. On the 6th day of December, Davies being in the Grove Inn at closing time, invited Wild, Baker, and one Chappell, to play cards at his house. On arriving at Davies' house the four played whist. Subsequently they played at a game called "German Bank," and again at another called "Nap." The game of "German Bank" was described by witnesses to the jury, and the chairman in his charge put the following questions to the jury :

(1) Was the defendant Davies the occupier of the house and room?—Answer : Yes.

(2) Did he open them on the occasion in question for the purpose of unlawful gaming?—Answer : No.

(3) Did he use them on the occasion for the purpose of unlawful gaming?—Answer : Yes.

(4) Was the game of "German Bank" as played on the occasion in question an unlawful game?—Answer : Yes.

(5) Was the house used as a "common gaming house," or was it on the evidence only used on the occasion in question for the purpose of playing an unlawful game?—Answer : It was used as such only on the occasion?

Upon these findings a verdict of guilty was entered against Davies upon the third and seventh counts, and of acquittal upon the rest.

*E. Honoratus Lloyd* for the Crown.—The jury were directed as to what games were unlawful, and they found that "German Bank" was an unlawful game. That is sufficient to support the conviction.

The defendant was not represented.

Lord Russell, C.J.—We think that this conviction cannot be supported. These persons were not strangers but friends. Being together in a public-house when closing time comes, there is a proposition that they shall have a game of cards, and they go, taking refreshments with them, to Davies' house. They begin to play whist, and they play whist for some time, until Chappell, being dissatisfied with his partner, refuses to continue the game, when



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they play "German Bank." As to what "German Bank" is, is not clearly stated in the case, but looking at the statute it would be monstrous to say that the defendant had opened or used his house for the purpose of unlawful gaming. It seems impossible to say that the room was "used" within the meaning of the statute. Again the jury were asked "is German Bank an unlawful game? That was not a question of fact for the jury, but of law for the judge. The jury found no verdict, but merely answered the questions left to them. Now the jury are to determine the question of "Guilty" or "Not guilty," and although it is not unusual to ask questions of the jury, unquestionably it is proper to get the verdict of the jury "Guilty" or "Not guilty," on the direction of the judge.

HAWKINS, GRANTHAM, WRIGHT, and COLLINS, JJ. concurred. Solicitors for the prosecution, *Philpot and Son*, for *Clerk of the Peace*, Cheshire.

## JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

Wednesday July 7, 1897.

(Present: The Right Hons. the LORD CHANCELLOR (Halsbury), Lords WATSON, HOBHOUSE, MACNAGHTEN, and JAMES OF HEREFORD, Sir R. COUCH, and MR. WAY.

SAYAD MUHAMMAD YUSUF-UD-DIN v. THE QUEEN. (a)

ON APPEAL FROM THE CHIEF COURT OF THE PUNJAUB.

*Criminal procedure—Arrest out of British territory—Legality—Jurisdiction along line of railway in independent state.*

*The ruler of an independent state in India granted to the British Government civil and criminal jurisdiction along a line of railway running through his territories.*

*Held (reversing the judgment of the Court below) that this jurisdiction only extended to offences committed on the railway, and to matters connected with the administration of the railway, and did not amount to a cession of territory, or justify the arrest of a person on the railway for an offence committed in another part of India in no way connected with it.*

THIS was an appeal against a judgment and order of the Chief Court of the Punjaub of the 17th day of February,

(a) Reported by C. E. MALDEN, Esq., Barrister-at-Law.

1896, which dismissed an application made in that Court in its criminal jurisdiction on behalf of the appellant to have a warrant which had been issued against him cancelled as being issued without jurisdiction, and to have certain criminal proceedings then pending against the appellant in the Court of the Magistrate of Umballa stayed or quashed on the like ground.

The appellant was a subject of his Highness the Nizam of Haidarabad, in the Deccan, who was an independent Sovereign.

The appellant resided at Haidarabad, and not within British territory nor within the limits of the railway lines mentioned in the case.

On the 18th day of September, 1895, the Resident at Haidarabad applied to the District Magistrate at Simla for a warrant of arrest against the appellant on a charge of abetting an attempt to bribe a person at Simla.

The District Magistrate issued a warrant and placed upon record a note to the following effect :

In handing this warrant over I have explained that it cannot be executed outside British India except through a political agent. If the accused is in foreign territory the Resident who applies for the warrant and is Political Agent for Haidarabad must decide whether he can be made over to the British courts under the extradition law.

On the 28th day of November, 1895, the appellant went to a station on the Nizam's Guaranteed State Railway, and while there was arrested under the warrant by an officer of the railway police in the service of the Government of India and was taken before the railway magistrate, by whom he was, after detention in custody for two days, released on bail on the 30th day of November to appear before the District Magistrate of Simla on the 8th day of December to answer the charge.

The appellant appeared accordingly, and on the 13th day of January, 1896, an order was made by the Chief Court of the Punjaub transferring the case to the Court of the District Magistrate of Umbala for trial by him.

The appellant applied to the Chief Court of the Punjaub on the 14th day of January, 1896, to stay the proceedings in the case before the district magistrate and to set aside the order of the District Magistrate of Simla directing the issue of the warrant for the arrest of the appellant.

On the 17th day of February, 1896, the Chief Court dismissed the application. The presiding judge in his judgment referred to the Government of India Notification No. 1143-1, dated the 22nd day of March, 1888, which was published in the *Gazette of India* of the 24th day of March, 1888, as follows :

Whereas his Highness the Nizam of Haidarabad has granted to the British Government full jurisdiction within the lands in his territory which are occupied, or may hereafter be occupied, by his Highness the Nizam's Guaranteed State Railways Company, by the Great Indian Peninsular Railway, by the Madras Railway, and by the Southern Mahratta Railway respectively (including the lands occupied as stations, outbuildings, and for other railway purposes). In exercise of this jurisdiction, and of the powers conferred by sects. 4 and 5 of the Foreign Jurisdiction and Extradition Act, 1879, and of all other powers enabling him in this behalf, the Governor-General in Council is pleased to issue the following orders: " Part I.—The provisions, so far

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Jurisdiction  
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ent state in  
India.

as they may be applicable and as amended for the time being by subsequent enactments, of the Acts mentioned below are hereby extended to the aforesaid lands—namely, Act XLV. of 1860 (the Indian Penal Code), Act V. of 1861 (for the Regulation of the Police), Act VI. of 1864 (the Whipping Act), Act I. of 1871 (the Cattle Trespass Act, Act X. of 1882 (the Code of Criminal Procedure).” . . . “Part II.—For the purpose of the exercise of criminal jurisdiction within the aforesaid lands the Governor-General in Council is pleased to make the following arrangements:—1. There shall be a railway magistrate, who shall be the second assistant to the Resident at Haidarabad. 2. The railway magistrate shall have the powers of a district magistrate as described in the Code of Criminal Procedure.”

The learned judge thought that the effect of this grant of jurisdiction and of the notification was to amend the 1st and 82nd sections of the Code of Criminal Procedure, the material part of which sections is as follows:

1. This Act may be called “The Code of Criminal Procedure, 1882.” . . . It extends to the whole of British India.

82. A warrant of arrest may be executed in any part of British India.

The effect of the grant of jurisdiction and notification was, the learned judge held, to add to these sections after the words “British India” the words “and any territory over which jurisdiction was ceded under sect. 4 of Act XXI. of 1879.”

The learned judge was of opinion that the effect of this amendment was to extend the whole of the Civil Procedure Code to the lands specified (in this case to the railway lands or railway lines as they were called) and to give to the magistrate of Simla power to issue the warrant to the railway magistrate at Haidarabad, and give to the latter officer power to deal with it, and direct its execution, just as any other magistrate, acting under the powers of the Criminal Procedure Code, would have been bound to do. The learned judge said: “That the petitioner is a subject of the Haidarabad State does not affect the matter. Full jurisdiction in the place where he was arrested was ceded over Haidarabad subjects as well as British subjects. The notification contained no exception or reservation, and petitioner was within those limits as liable to arrest as he would have been at Simla or in any other district in British India.”

The appellant applied to the Judicial Committee of the Privy Council for special leave to appeal against the judgment and order of the Chief Court, and the Judicial Committee granted him leave on the ground that there was no jurisdiction to issue the warrant for his arrest in a place which was not British territory, he not being a British subject, nor resident in British territory.

*Asquith*, Q.C. and *Branson* appeared for the appellant.

*Cohen*, Q.C. and *J. D. Mayne* for the respondent.

At the conclusion of the arguments their Lordships’ judgment was delivered by

The LORD CHANCELLOR (Halsbury).—In this case their Lordships are called upon to pronounce their opinion as to whether the arrest of Yusuf-ud-Din, a native of the Nizam’s State, was lawfully executed by the warrant issued by the magistrate issuing the warrant from Simla. The alleged offence for which the

accused was arrested was being party to the offence, calling it compendiously, of bribery alleged to have been committed in British territory. Their Lordships have nothing to do with the question whether or not if the accused had been found within British territory he could have been lawfully tried and convicted of that offence, because the question reserved for their Lordships here to consider is whether or not the arrest while he was at the station on the railway, which was locally situated within the dominions of the Nizam, was a lawful arrest or not. Nor have their Lordships anything to do with the consequences of whether that arrest was lawful or not. The one question which they have to determine is whether the arrest was lawful. The offence which was charged against the accused was an offence which was alleged to have been committed in British India, and, subject to what I am about to say, their Lordships are of opinion that the territory upon which the railway is locally built was and has continued to be part of the dominions of the Nizam. Their Lordships are of opinion that that territory has never become part of British India, and is still part of the dominions of the Nizam. The authority therefore to execute any criminal process must be derived in some way from the Sovereign of that territory, and the only authority relied on here is the authority given in the correspondence with the Nizam, notified as one of the conditions of its operations by the British Government. It is important to observe that the notification upon which the learned judges in India appear to have relied can itself give no such authority. Even if in more extensive terms than, in fact, were included in the notification it had purported to give jurisdiction—as a stream can rise no higher than its source—that notification can only give effect to the extent to which the Sovereign of the territory, the Nizam, had permitted the British Government to make that notification. Their Lordships are not prepared to differ from the construction which has been placed by the learned judges in India on the notification, if the notification was itself the source of authority. But the notification is not the source of authority; the source of authority, of which this is only the notification, is to be derived from the sovereign power of the Nizam himself. It becomes therefore necessary, as there is no express statute or any words which in themselves convey the amount of jurisdiction intended to be conveyed by the Nizam, to revert to the correspondence which passed between those representing the two Governments, to see in the first place what was asked for and what was ultimately conceded. The authority which was asked for was authority to exercise civil and criminal jurisdiction over the railway lines or premises, and if there is one thing manifest in the correspondence more than another it is that the Nizam jealously refused anything in the nature of a cession of territory such as would confer by itself local jurisdiction. It is the one thing which all through the correspondence appears to have been refused. The result is, that one

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*Arrest—  
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India.*

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dent state in  
India.

must look and see what was ultimately conceded, and when one comes to look at that which was asked for and that which was granted it seems to be very plainly set forth as follows: "Moreover, all these Jagirdars have for the past twenty years been witnesses of the management of all railway cases and police by a British officer under the direct orders of the Resident; and the system now proposed is practically precisely the same as has been in force all that time." What that system was and how far it exceeded the boundaries of strict personal jurisdiction may be observed from what Mr. Cordery's own letter describes it as being: "About the railway jurisdiction question, is it not possible to obtain the Nizam's agreement to what the Government of India want? The present arrangement is very dangerous, and if a crime were committed the High Court would declare all our proceedings illegal." It is manifest from that that the practice which has been going on, and apparently was quite rightly described as illegal if a question had been raised, required the sanction of the Nizam to make it legal and to continue the practice which had hitherto been observed. The result is, that what was asked for and what in the concluding letter was given was this: "In reply to your letter dated the 6th inst. I beg leave to state that his Highness's Government is willing to accede to the wishes of the Government of India regarding the criminal and civil jurisdiction along the line of railway, as is the case on other lines running through independent States." If that is the only jurisdiction which was given, it is manifest that the jurisdiction conferred was a jurisdiction criminal and civil along the line of railway, "as in the case of other lines running through independent States." The only question which remains is whether the act complained of in this case was one which could be regarded as coming within the jurisdiction "along the line of railway, as in the case of other lines running through independent States." It was not suggested that the particular offence charged was committed on the railway, or that it was in any way connected with the administration of the railway. What was suggested was that in another part of India—at Simla—the offence was committed, and, because the appellant was physically present on a portion of the line of railway over which jurisdiction was given for the purpose of criminal and civil jurisdiction he was open to criminal procedure for an offence which was alleged to have been committed elsewhere. Their Lordships are of opinion that there is no foundation for any such claim and that the arrest was illegal, that the petition ought therefore to have been granted, and that the judgment of the Courts in India ought accordingly to be reversed. Their Lordships will therefore recommend Her Majesty that that course should be pursued, and that the warrant of arrest and proceedings thereon be set aside.

Solicitors for the appellant, *Morgan, Price, and Mewburn.*

Solicitor for the respondent, *The Solicitor to the India Office.*

## JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

*Wednesday, July 16, 1897.*

(Present : The Right Hons. the LORD CHANCELLOR (Halsbury),  
Lords HOBHOUSE and MORRIS, Sir RICHARD COUCH, Sir H. DE  
VILLIERS, and Sir H. STRONG.)

CAREW *v.* CROWN PROSECUTOR IN JAPAN. (a)

PETITION FOR LEAVE TO APPEAL FROM THE SUPREME COURT OF  
CHINA AND JAPAN.

*Practice — Trial by jury — Trial “according to the laws of  
Great Britain” — Foreign Jurisdiction Act, 1890 (53 & 54  
Vict. c. 37), s. 1.*

*A British subject tried on a criminal charge in a foreign country  
by a Court constituted under an Order in Council, or the Foreign  
Jurisdiction Act, 1890, or any of the statutes repealed by that  
Act, has no inalienable right to be tried according to the pro-  
cedure of British Courts in this country, provided that the pro-  
ceedings are not contrary to natural justice.*

*Leave to appeal refused.*

**T**HIS was a petition presented by Edith May Hallowell Carew,  
now imprisoned in Hong-Kong, praying that she might be  
granted special leave to appeal from the verdict given and the  
verdict passed on her in February, 1897, upon her trial for the  
murder of her husband.

The case was tried before his Honour Judge Mowatt and a  
jury of five persons, at Yokohama, and the petitioner was found  
guilty and sentenced to death. The sentence of death was  
afterwards reduced to a sentence of imprisonment with hard  
labour for life.

She was tried under the provisions of an Order in Council,  
dated the 9th day of March, 1865, which provided for the govern-  
ment of British subjects in China and Japan. That order pro-  
vided that a Court should be established for the trial of cases in  
which British subjects were concerned in China and Japan. It  
was provided that the Court should be presided over by a judge,  
and that the jury should consist of five jurors. The petitioner  
was tried by a Court so constituted. It was contended on her  
behalf that the Order in Council, so far as it relates to British  
subjects in Japan, was *ultra vires*.

(a) Reported by C. E. MALDEN, Esq., Barrister-at-Law.



CAREW  
v.  
CROWN  
PROSECUTOR  
IN JAPAN.

1897.

Practice—  
Trial by jury  
— Foreign  
Jurisdiction  
Act, 1890—  
53 & 54 Vict.  
c. 37, s. 1.

Sir *F. Lockwood*, Q.C. and *M. Macnaghten* appeared for the petitioner, and contended that persons tried in the Queen's Court in Japan had a right to be tried by a jury of twelve men. The law as to the constitution of a jury could not be altered by an Order in Council. By a treaty made in 1858 between the English and the Japanese Governments, the Queen was granted power to try British subjects resident in Japan "according to the laws of Great Britain." Subsequently the various Foreign Jurisdiction Acts were passed in order to make the exercise of this extra-territorial jurisdiction legal. The Act of 1890, which is a consolidating Act, provides: "Whereas by treaty, capitulation, grant, usage, sufferance, and other lawful means, Her Majesty the Queen has jurisdiction within divers foreign countries, and it is expedient to consolidate the Acts relating to the exercise of Her Majesty's jurisdiction out of her dominions, be it enacted by the Queen's most Excellent Majesty, &c., . . . that it is and shall be lawful for Her Majesty to hold, exercise, and enjoy any jurisdiction which Her Majesty now has, or may at any time hereafter have within a foreign country in the same and as ample a manner as if Her Majesty had acquired that jurisdiction by the cession or conquest of territory." The Order in Council only purports to administer British law to British subjects. There is no power to make new laws for Japan. The Act only enables the Queen to exercise the jurisdiction granted by the Treaty of 1858, which expressly enforced a jurisdiction to try British subjects in Japan "according to the laws of Great Britain." There is no power to conduct a trial in any other way. Further there was improper reception of evidence, and misdirection by the learned judge, amounting to a grave miscarriage of justice. A deposition taken before the coroner, without cross-examination, was admitted on the ground that the witness was not well enough to be present at the trial.

At the conclusion of the arguments for the petitioner, their Lordships' judgment was delivered by

The LORD CHANCELLOR (Lord Halsbury).—Their Lordships are of opinion that this is not a case in which it would be desirable or proper, or within the ordinary course of this Board, to give special leave to appeal. Their Lordships have no doubt whatever that Her Majesty had full jurisdiction to establish the Court, and to constitute the Court in such a way as the Court has been constituted, namely (*vide* China and Japan Order in Council, 1865), with a jury of five. In truth the objection, if it were a reasonable and arguable objection, would go to the existence of any Court at all. It is manifest that the language of the statute (the Foreign Jurisdiction Act, 6 & 7 Vict. c. 94) intended to remove any doubt which there was, if there was a doubt, as to Her Majesty's jurisdiction to establish Courts by Order in Council under the circumstances of this case. The statute has placed it beyond doubt, because it uses in terms the phrase, that Her Majesty shall have as ample jurisdiction as though she had

obtained the jurisdiction by cession of territory or conquest ; and it is familiar law, which cannot now be denied, that a conqueror has a right to impress on conquered territory what system of jurisdiction he pleases. The statute has removed any doubt which may be entertained on the subject as to whether such rights extended to the jurisdiction over the Queen's own subjects, and therefore their Lordships are of opinion that the jurisdiction is well founded. With reference to the other questions which Sir Frank Lockwood attempted to argue, it is only necessary to say that, save in very exceptional cases, leave to appeal in respect of a criminal investigation is not granted by this board. The rule is accurately stated as follows, in the case to which I referred in the course of the argument—*Re Dillett* (56 L. T. Rep. 615 ; 12 App. Cas. 459) : “ Her Majesty will not review or interfere with the course of criminal proceedings unless it is shown that by a disregard of the forms of legal process, or by some violation of the principles of natural justice, or otherwise, substantial and grave injustice has been done.” No such case has been made out here, and the other objections are not within the description of objections which this Court will entertain for the purpose of admitting an appeal. Under these circumstances their Lordships will humbly advise Her Majesty that no leave to appeal should be given.

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IN JAPAN.

1897.

Practice—  
Trial by jury  
—Foreign  
Jurisdiction  
Act, 1890—  
53 & 54 Vict.  
c. 37, s. 1.

Solicitors for the petitioners, *Prentice and Co.*

## QUEEN'S BENCH DIVISION.

*Monday, Aug. 2, 1897.*

(Before COLLINS and RIDLEY, JJ.)

MORRIS (app.) v. EDMONDS (resp.). (a)

*Vagrant—Wife and children—Wilful neglect to maintain—Bonâ fide belief of adultery—Vagrancy Act, 1824 (5 Geo. 4, c. 83), s. 3.*

*The respondent T. E. was charged under sect. 3 of the Vagrancy Act, 1824, for that he, being able to work and maintain himself and his wife and family, “ wilfully refused or neglected ” to do so. The magistrates found that he refused to maintain his wife because of the bonâ fide belief that she had committed adultery, and that he had offered under certain conditions to support his children. They dismissed the summons, holding that under*

(a) Reported by W. DE B HERBERT, Esq., Barrister-at-Law.

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*Vagrancy Act,  
1824—Neglect  
to maintain  
family—Mens  
rea—Bond  
fide belief in  
wife's adul-  
tery—5 Geo. 4,  
c. 83, s. 3.*

*these circumstances T. E. the respondent had not "wilfully refused or neglected."*  
*Held, that the magistrates were right.*

THIS was a case stated by justices of the peace acting in and for the county of Monmouth.

1. The appellant and respondent duly appeared before us on the 24th of March, 1897, sitting as the petty sessional Court of summary jurisdiction held for the division of Abergavenny, upon the hearing of the following summons:

In the county of Monmouth.—Petty sessional division of Abergavenny.—To Thomas Edmonds, in the parish of Llantillio, Pertholey, in the said county, labourer.—Information on oath has been laid this day by Bathias Clement Morris, of the parish of Abergavenny, in the county of Monmouth, relieving officer, for that you on the 12th day of February, 1897, at the parish of Abergavenny, in the said county, were an idle and disorderly person, in that you, being a person able to work, and thereby in part then to maintain yourself and your family, unlawfully and wilfully have neglected and did neglect so to do, whereby Elizabeth Edmonds, your wife, and Ada Lewis, Frederick Lewis, Florence Lewis, Eva Edmonds, and Edith Edmonds, her children, whom you are legally bound to maintain, did, on the 12th day of February, become and still are chargeable to the common fund of the Abergavenny Union, contrary to the form of the statute in that case made and provided. You are therefore summoned to appear before the Court of summary jurisdiction sitting at the police-court, in the town of Abergavenny, in the county of Monmouth, on Wednesday, the 17th day of March, 1897, at the hour of eleven o'clock in the forenoon, to answer to the said information.—Dated this 11th day of March, 1897, at Abergavenny, in the county of Monmouth aforesaid.—C. MORGAN, Justice of the Peace for the county of Monmouth.

2. The summons was taken out under sect. 3 of the Vagrancy Act, 1824.

3. After hearing the parties and the evidence of the appellant (who was the only witness examined), and the statement made on behalf of the respondents, we dismissed the summons.

4. The appellant, being dissatisfied with our decision as being erroneous in point of law, and having duly applied to us in writing to state a special case, and the grounds on which the proceeding is questioned, and having duly entered into a recognisance as required by the statute 20 & 21 Vict. c. 43, s. 3, we, in compliance with the application, do hereby state and sign the following case:

5. Upon the evidence before us, we found the following facts: That Elizabeth Edmonds, the wife of the respondent, and the respondent entered into a deed of separation, dated the 27th day of April, 1893, whereby the respondent covenanted to pay her the sum of 5s. per week during their joint lives towards the

maintenance of herself and her children, of whom she was to have the sole custody, and whom she was to maintain, and she covenanted not at any time thereafter to require the respondent to live with her. That the respondent and his wife lived apart in accordance with the deed, and the respondent for some time made the payments due under the deed, but subsequently ceased to make the same. That the respondent ceased to make such payments in consequence of a *bonâ fide* belief that his wife had committed adultery subsequent to the date of the deed. That Elizabeth Edmonds and her children named in the summons became on the 12th day of February, 1897, chargeable to the Abergavenny Union, and that the respondent subsequently attended before the guardians of the union, and refused to maintain them, or to contribute towards their maintenance.

6. The respondent denied that he had wilfully refused or neglected to maintain his family within the meaning of the Vagrancy Act, 1824, and he explained that he had ceased to make the payments to her because he alleged that she had committed adultery, and stated that he was willing to pay towards the maintenance of the children provided they were relieved in the workhouse, alleging that his wife was not a proper person to have charge of young children, and that he was unable to take charge of them himself, being an indoor servant, but he refused to maintain his wife.

7. Upon the facts hereinbefore stated we decided that this was a case of *bonâ fide* mutual separation by deed, and that the respondent had at the time of separation made provision for his wife and her children, and had ceased to pay her in consequence of a *bonâ fide* belief that she had committed adultery, and that the respondent had not within the true meaning and intent of the Vagrancy Act wilfully refused or neglected to maintain his wife and children, and that he therefore was not guilty of the offence charged against him by the summons, which we therefore dismissed.

8. The question of law arising on the foregoing statement for the opinion of the High Court is, whether the respondent is guilty of wilfully refusing or neglecting to maintain his wife and her children within the true intent and meaning of the Vagrancy Act, 1824, s. 3.

9. If the High Court shall be of opinion that we, the justices, on the findings of fact, came to a correct determination and decision in point of law, then the order of dismissal is to stand; but if the High Court shall be of opinion otherwise, then the High Court is humbly solicited to remit this case to us, the justices, with the opinion of the High Court thereon, or to make some other order as to the court may seem fit.

Given under our hands this 12th day of May, 1897, at Abergavenny, in the county of Monmouth.

R. W. KENNARD.  
S. H. STEEL.

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1897.

Vagrancy Act,  
1824—Neglect  
to maintain  
family—*Mens  
rea*—*Bonâ  
fide* belief in  
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tery—5 Geo. 4,  
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MORRIS

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1897.

*Vagrancy Act, 1824—Neglect to maintain family—Mens rea—Bond fide belief in wife's adultery—5 Geo. 4, c. 83, s. 3.*

*Freeman Jenkins* for the appellant.—There is nothing in the case which relieves the respondent from his obligations to maintain (1) the wife, (2) the children. As to (1) the point may be arguable; but as to (2) no agreement between the husband and wife can relieve the former from his obligation to support the children. True, that committal of adultery has been held to be a defence, *Rex v. Flintan* (1 B. & Ad. 227), but there is no direct authority that *bonâ fide* belief of adultery amounts to a defence.

*S. T. Evans* for the husband, the respondent.—The justices were right. The word in the statute is "wilfully." This is not a statute in which an order for maintenance is made. That would be under 31 & 32 Vict. c. 122, s. 33, but the word "wilfully" imparts a *mens rea*, and that must be shown before he becomes an idle and disorderly person. The principle, I contend for is laid down in *Reg. v. Tolson* (16 Cox C. C. 629; 60 L. T. Rep. 899; 23 Q. B. Div. 168) by both Stephen, J. at p. 188, and Hawkins, J. at p. 193. As to what "wilfully" means in an Act of Parliament, see *Smith v. Barnham* (34 L. T. Rep. 774; 1 Ex. Div. 419). This was a case of wilfully polluting a stream, and Bramwell, B. deals with the word at p. 423. In three other cases the word has been considered: (*Reg. v. Badger*, 6 El. & Bl. 137; 25 L. J. 81, Q. B. at p. 90.) Also in *Re Mill's Trusts* (60 L. T. Rep. 442; 40 Ch Div. 14) and *Hosegood v. Camps* (53 J. P. 612). There is no finding in the case of the refusal to keep the children.

*Jenkins* in reply.

COLLINS, J.—I am of opinion that we ought not to interfere with the discretion of the magistrates. They heard and saw the parties, and came to a conclusion that this was *bonâ fide*. I was impressed at one time with the distinction of the fact of adultery and *bonâ fide* belief of adultery, but this is a proceeding not to enforce maintenance, but a penal proceeding for an offence, and so we must look and see if the respondent has "wilfully" refused to maintain. The authorities quoted establish that under the circumstances of this case, the man cannot be described as an idle and disorderly person. I think the decision of the magistrates perfectly right, and this appeal must be dismissed.

RIDLEY, J. concurred.

*Appeal dismissed with costs.*

Solicitors for the appellant, *Fallows and Rider*, for *Baker*, Abergavenny.

Solicitor for the respondent, *T. H. Philpots*, for *T. G. Powell*, Brynmaur.

## QUEEN'S BENCH DIVISION.

Wednesday, Aug. 11, 1897.

(Before LAWRENCE and COLLINS, JJ.)

REG. v. THE GOVERNOR OF HOLLOWAY PRISON; *Ex parte* EMILE GEORGE. (a)

*Larceny by bailee—Habeas corpus—Extradition—Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 3.*

*On an application for a writ of habeas corpus, the evidence showed that a loan was raised on a bond by a person authorised so to raise the loan, and that there was a fraudulent appropriation by him of the money so raised.*

*Held, (following the decision of Reg. v. De Banks, 15 Cox C. C. 450; 50 L. T. Rep. 427), that the evidence amounted to evidence of larceny by a bailee under sect. 3 of the Larceny Act, 1861, and the rule was accordingly discharged.*

IN this case a rule *nisi* had been obtained calling upon the Governor of Holloway Prison to show cause why a writ of *habeas corpus* should not issue directing him to bring up the body of one Emile George before the Court to be dealt with as they should direct.

Proceedings had been taken in the Tribunal of First Instance of the Department of the Seine, on the ground that he had been guilty of *escroquerie et d'abus de confiance* (fraud and embezzlement). He was found in England, and his extradition was demanded by the French Government. Mr. Lushington, the magistrate at Bow-street, held that there was no evidence of *escroquerie*, but committed him for extradition under sect. 3 of the Larceny Act for *abus de confiance*, which he held to be larceny by a bailee.

The writ of *habeas corpus* was demanded on the ground that there was no evidence before the committing magistrate of any act committed by Emile George which if committed in England would have constituted an offence according to English law.

The translation of the deposition of Madame Barbot Emilie Augustine Ramond de la Croisette, the prosecutrix, was as follows :

The person named George, in the month of January last, asked me for my daughter Martha in marriage. His references being excellent, I consented to the union. As it was necessary, in order to meet the expenses of the marriage, that I should get a certain sum of money, I decided to entrust George with a French 8 per cent. bond

(a) Reported by W. DE B. HERBERT, Esq., Barrister-at-Law.



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*Extradition—*  
*Larceny by*  
*bailee—*  
*Habeas corpus*  
*—Larceny*  
*Act, 1861—*  
*24 & 25 Vict.*  
*c. 96, s. 8.*

for 1200 francs, the value of which was about 40,000 francs, on which he told me he had found the means of raising a loan through the mediation of a M. Leroy, a business man at No. 9, Rue Geoffroy Marie. George obtained from me an authority to receive in his name a sum of 10,000 francs, which he was to hand to me, but he only handed to me 5000 francs, pretending that, for greater safety, it was preferable to leave the 5000 francs surplus with M. Leroy; but over and above this, out of the 5000 francs which he handed to me, he asked me to lend him 2000 francs each time, that is to say, 4000 francs, which he was to give me back four days later, which he has not done. Being compelled to meet the expenses of the marriage, which was to have taken place on the 28th day of April, I consented, at George's request, to negotiate a further loan on my bond of 6000 francs. I gave him another authority to receive the money for me, which he did, but he kept the whole of it. . . . After receiving peremptory notice, George ended by declaring to me that the marriage proposals which he had made were only conditional, and he disappeared.

By the Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 3:

Whosoever being a bailee of any chattel, money, or valuable security, shall fraudulently take or convert the same to his own use, or the use of any other person other than the owner thereof, although he shall not break bulk, or otherwise determine the bailment, shall be guilty of larceny, and may be convicted thereof upon an indictment of larceny.

*Sutton*, for the Crown, showed cause.

*Spencer Bower* for George.—The receipt of the money was from the lender. He did not receive it from the prosecutrix at all. He did not appropriate the money actually advanced, for he was not bound to hand over those specific coins. There can be no appropriation of the money or a larceny of these moneys, as there was no obligation to hand over the actual money received but only an equivalent. He referred to *Reg. v. Hassall* (4 L. T. Rep. 561; L. & C. 58); *Reg. v. Brownlow* (39 L. T. Rep. 479). [COLLINS, J.—*Reg. v. De Banks* (50 L. T. Rep. 427; 13 Q. B. Div. 29), and *Reg. v. Bunkall* (9 L. T. Rep. 778; L. & C. 371) are against you.]

LAWRANCE, J.—I am of opinion that this rule must be discharged. The case of *Reg. v. De Banks* (*ubi sup.*) is on all-fours with the present, for, if you substitute a bond for the horse, the cases are one. It is said that the principle in *Reg. v. De Banks* (*ubi sup.*) is not in accord with *Reg. v. Hassall* (*ubi sup.*) but the facts and the cases are entirely different. In *Reg. v. Hassall* (*ubi sup.*) a treasurer of a money club received small weekly payments from each member, and had authority with the secretary's consent to lend the club money to members. There was a periodical division of the funds and profits amongst the members. There it was held that the treasurer could not be indicted as a fraudulent bailee for larceny of moneys paid in by a member. Now, in *Reg. v. De Banks* (*ubi sup.*) the prisoner was employed by the prosecutor to take care of a horse for a few days, and afterwards to sell it and give him the money. He sold it, and absconded with the money. It was held that he was a bailee of the money, and could be convicted. That is practically what occurred here. It was like a person being sent to a bank to cash a cheque, who, after he had cashed it, absconded with the money. He would be a bailee, and could be convicted as such.

COLLINS, J.—If Mr. Spencer Bower's contention was a right

one, it would show a most lamentable deficiency in our criminal law. In these two transactions in this case there is abundant evidence of larceny by a bailee. In the first the bond was intrusted to George to obtain a loan, and in the second it was again intrusted to him to negotiate a further loan. It is contended that such transactions as took place in this case cannot be reached by the criminal law. Now, sect. 3 of the Larceny Act, 1861, is in these terms. [His Lordship read the section, and continued:] Now, the question is, was George a bailee? He undoubtedly converted this money. Why should he not be a bailee? There was a marked sum to be returned in this case, and unquestionably he was a mandatory, and, further, he was a depositary. It is said that *Reg. v. Hassall* (*ubi sup.*) bears on this case, but the facts there are altogether different, and I think the rule must be discharged, for obviously in that case there was a fund to be dealt with. He was not a bailee, but a trustee. That has no bearing on this, and *Reg. v. De Banks* (*ubi sup.*) is a clear authority for the principle in this case.

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*Estradition—*  
*Larceny by*  
*bailee—*  
*Habeas corpus*  
*—Larceny*  
*Act, 1861—*  
*24 & 25 Vict.*  
*c. 96, s. 3.*

*Rule discharged.*

Solicitor for the Crown, *The Solicitor to the Treasury.*

Solicitor for George, *Joseph Davey.*

## QUEEN'S BENCH DIVISION.

*Thursday, July 29, 1897.*

(Before COLLINS and RIDLEY, JJ.)

HATTON (app.) v. TREEBY (resp.). (a)

*Assault—Arrest by police—Bicycle—Riding bicycle on highway at night without lighted lamp—Power of police officer to arrest offender—Highway Act, 1835 (5 & 6 Will. 4, c. 50), ss. 78, 79—Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 85.*

*A police constable has no power to apprehend a person who is riding a bicycle on the highway at night without having a lighted lamp, as required by the regulations contained in sect. 85 of the Local Government Act, 1888. The provision in that section declaring bicycles to be carriages within the meaning of the Highway Acts does not include or incorporate the power to arrest without a warrant given by sects. 78 and 79 of the Highway Act, 1835; and, consequently, if a constable, for the purpose of obtaining the name and address of an offender, who refuses*

(a) Reported by W. W. ORR, Esq., Barrister-at-Law.

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TREBBY.

*to stop when called upon, seizes the bicycle, and thereby throws the rider to the ground, he is guilty of assault.*

1897.

Assault—  
Arrest—  
Bicyclist  
riding with-  
out light—  
Highway  
Act, 1835—  
Local Govern-  
ment Act,  
1888—5 & 6  
Will. 4, c. 50,  
ss. 78, 79;  
51 & 52 Vict.  
c. 41, s. 85.

CASE stated by justices of the peace for the county of Somerset.

At a petty sessions, held at Keynsham, in the county of Somerset, on the 26th day of February, 1897, the appellant was summoned by the respondent (a police constable of the county of Somerset), for that he, the appellant, had committed an offence against sect 85 of the Local Government Act, 1888 (51 & 52 Vict. c. 41), by riding his bicycle on the highway at Keynsham, on the 17th day of January, 1897, without carrying a lamp so constructed and placed as to exhibit a light in the direction in which he was proceeding, and so lighted and kept lighted as to afford adequate means of signalling the approach or position of the carriage.

The charge against the appellant was proved, and the justices imposed the mitigated penalty of 2s. 6d.

At the same petty sessions the respondent appeared in answer to a summons issued on the complaint of the appellant, who alleged that the respondent on the same day did unlawfully assault and beat the appellant by pushing or causing him to fall from his bicycle when he was then and there riding on the highway.

The complaint of the appellant was, that the respondent had stopped him by catching hold of his bicycle, and thereby causing him to fall off.

It was proved, and the justices found as a fact, that, upon the 17th day of January the respondent was acting as a police officer on duty in the parish of Keynsham, and that about 10 p.m. he saw the appellant approaching him riding a bicycle; he saw that the appellant had no light attached to his bicycle, and he thereupon called the appellant to stop in order that he might ascertain his name and address, and to prevent a continuance of the offence.

The appellant and a witness called on his behalf, who was riding with him, stated that they did not hear the call, and the justices did not find as a fact that they did.

The appellant failed to stop, and thereupon the respondent caught hold of the handle bar of the bicycle and the appellant fell to the ground, such fall being occasioned by the act of the respondent in catching hold of the bicycle.

The justices found as a fact that the respondent did not know the name or address of the appellant, and they were of opinion that the appellant's name and address could not have been ascertained in any other way than by stopping him, and they were also of opinion that in so stopping him the respondent was acting in pursuance of his duty, and they found as a fact that he used no more force than was necessary.

The justices were of opinion that, as the appellant was

committing an offence punishable on summary conviction within view of the police constable (the respondent), he, the respondent, was justified in stopping him and did stop him in order to prevent a continuance of the offence, and for the purpose of ascertaining his name and address.

The justices dismissed the complaint of the appellant against the respondent.

The question of law for the opinion of the Court was, whether the justices were right in dismissing the complaint of the appellant.

Sect. 78 of the Highway Act, 1835 (5 & 6 Will. 4, c. 50), after enumerating several offences by drivers of waggon or carts on the highway, provides :

Every person so offending in any of the cases aforesaid, and being convicted of any such offence . . . before any two justices of the peace, shall, in addition to any civil action to which he may make himself liable, for every such offence forfeit any sum not exceeding five pounds in case such driver shall not be the owner of such waggon, cart, or other carriage, and in case the offender be the owner then any sum not exceeding ten pounds, and in either of the said cases shall, in default of payment, be committed to the common gaol, there to be kept to hard labour for any time not exceeding six weeks; and every such driver offending in either of the said cases shall and may by the authority of this Act, with or without any warrant, be apprehended by any person who shall see such offence committed, and shall be conveyed before any justice of the peace to be dealt with according to law.

Sect. 79 provides :

And whereas offences may be committed against this Act by persons whose names are unknown to the surveyor, assistant surveyor, or district surveyor; be it therefore enacted, that it shall be lawful for the surveyor . . . or any other person witnessing the commission of the offence, without any other authority than this Act, to seize and detain such unknown person who shall commit any such offence, and take him forthwith before any justice of the peace, &c.

Sect. 85 of the Local Government Act, 1888 (51 & 52 Vict. c. 41) provides :

(1.) . . . All provisions of any public or private Acts, in so far as they give power to any local authority to make bye-laws for regulating the use of bicycles, tricycles, velocipedes, and other similar machines, are hereby repealed, and bicycles, tricycles, velocipedes, and other similar machines, are hereby declared to be carriages within the meaning of the Highway Acts; and the following additional regulations shall be observed by any person or persons riding or being upon such carriage: (a) During the period between one hour after sunset and one hour before sunrise, every person riding or being upon such carriage shall carry attached to the carriage a lamp, which shall be so constructed and placed as to exhibit a light in the direction in which he is proceeding, and so lighted and kept lighted, as to afford adequate means of signalling the approach or position of the carriage.

(2.) Any person summarily convicted of offending against the regulations made by this section, shall for each and every such offence forfeit and pay any sum not exceeding forty shillings.

*Horace Ivory* (*Kenrick* and *Gregory* with him) for the appellant.—I submit that the action of the respondent, in taking hold of and stopping the bicycle, and thereby throwing the appellant to the ground, was clearly in law an assault, and that it cannot be justified unless the respondent had statutory authority for so acting. The stopping and detaining the appellant, even for the purpose of obtaining his name and address, was in law an arrest of the appellant, and, unless such arrest can be justified either at common law or by statute, it would be an assault. At common

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1897.

Assault—

Arrest—

Bicyclist  
riding with-  
out light—

Highway

Act, 1835—

Local Govern-  
ment Act,

1888—5 & 6

Will. 4, c. 50,

ss. 78, 79;

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—  
1897.  
—  
Assault—  
Arrest—  
Bicyclist  
riding with-  
out light—  
Highway  
Act, 1835—  
Local Govern-  
ment Act,  
1888—5 & 6  
Will. 4, c. 50,  
ss. 78, 79;  
51 & 52 Vict.  
c. 41, s. 85.

law a police constable has power to arrest without warrant a person who has committed a felony, or whom he reasonably suspects to have committed a felony, or on view of a breach of the peace, or where there is reasonable ground for apprehending a breach of the peace. He may also arrest without warrant in cases where the authority so to arrest is expressly given by a particular statute. But apart from these cases, as a general proposition, a person cannot be apprehended without warrant for an offence punishable—as the offence in the present case is—on summary conviction, unless there is an express statutory power so to arrest. To show how strictly this rule has been construed I refer to *Jones v. Owen*, in 1823 (2 D. & R. 600); and *Codd v. Cabe* (34 L. T. Rep. 453; 1 Ex. Div. 352), where Bramwell, B., in a considered judgment, said: ‘As a general rule, subject to certain exceptions mostly created by statute, a police officer cannot arrest without warrant a person not charged with felony.’ In *Jones v. Owen* (*ubi sup.*), which arose under the old Highway Act (13 Geo. 3, c. 78), sects. 60 and 61 of which contained provisions similar to sect. 78 of the Act of 1835, the action was for trespass for assault and false imprisonment for stopping horses on the highway in order to see the name of the owner of the waggon, as it was alleged that the driver was committing offences under the Act by riding in the waggon and attempting to conceal the name of the owner. The defendant laid hands on the driver and removed him from one part of the waggon to another, and the court there held that the act of the defendant was a trespass which gave a right of action. In *Reg v. Eaton* (59 J. P. 506), which was a case similar to the present, being a summons against a police constable for assault for stopping a bicycle in order to obtain the name and address of the rider and thereby throwing the rider to the ground, the Highgate justices held that this was an arrest, and being unjustifiable was an assault, and the defendant did not think it necessary to bring the case to the High Court. The defendant therefore cannot justify at common law, and he cannot justify under the statute. Here were two separate statutes dealing with two separate classes of offences, and it is only for offences under the Act of 1835 that the statute gives power to arrest, and if the court were to read one of the statutes into the other, so as to make the power to apprehend given by the Act of 1835 applicable to an offence created for the first time by the Act of 1888, that would not be construing the Acts, but laying down a new Act altogether. It is a general rule that, where the statute creates a new offence (as this Act of 1888 creates the new offence of riding a bicycle on a highway at night without a light), and lays down a certain remedy, that remedy, and no other, can be followed.

*J. A. Foote* for the respondent.—The case of *Reg. v. Eaton* (*ubi sup.*) differs from the present, as in that case the complaint against the rider of the bicycle was in respect of an offence committed a week previously, whereas in the present case the offence complained



of was actually being committed at the time the constable interfered. The section assumes that the offence is committed when it is dark, and therefore, unless the constable can have some special power to stop the offender, the remedy would be useless, and the statute in that respect reduced to a nullity. The whole argument in favour of the respondent rests on the word "additional" in sect. 85 of the Act of 1888, and when the section says the following "additional regulations" shall be observed it means that such regulations "shall be added to" the regulations in force under the Act of 1835, thereby incorporating the provisions of the one Act with the other, and applying the provisions of sects. 78 and 79 to these regulations as to bicycles. The word "either" in sect. 78 of the Act of 1835, where it says, "every such driver offending in 'either' of the said cases, shall and may, with or without any warrant, be apprehended," obviously means "any," as several cases have been enumerated, and sect. 79 contains the word "any." It was objected that there was a special remedy provided, and that that alone must be followed: but if it is once granted that the word "additional" shall be read in the way suggested, that difficulty is got over. He did not agree that the question here was as to the power to arrest in the sense of to apprehend. It was simply a power to stop that which was contended for, and all the case said was that the constable had to stop the appellant in order to find out who he was, and there was no other way of getting the information. The power of a constable to arrest without a warrant was considered in Russell on Crimes (6th edit.), vol. 3, pp. 83, 327, and the present was an offence which properly comes within "breach of the peace," as in the case of a person furiously riding along a highway. The only authorities to be found were as to actual affrays, and they did not help. As another way of considering the question he submitted that this was not an assault at all, looking at the intention of the constable in stopping the appellant. The definitions of assault all proceed on the ground that there must be an intention to do a corporal hurt. Bacon's Abr., tit. "Assault," says, "an assault is an attempt to offer, with force or violence, to do a corporal hurt to another;" and "battery" is "any injury whatsoever . . . being actually done to the person of a man, in an angry or revengeful, or rude or insolent manner"; and the definitions in Hawkins' Pleas of the Crown are similar. In *Coward v. Baddeley* (33 L. T. Rep. O. S. 125; 4 H. & N. 478) it was held that laying hands on a person not hostilely, but with the object of attracting his attention was not a criminal offence, and Martin, B. there said: "Touching a person so as merely to call his attention, whether the subject of a civil action or not, is not the ground of a criminal proceeding." Before a man can be convicted criminally of an assault, it must be shown that there was *mens rea*, a criminal or hostile mind. No such thing could be shown here, and the justices were therefore right.

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Assault—  
Arrest—  
Bicyclist  
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out light—  
Highway  
Act, 1835—  
Local Govern-  
ment Act,  
1888—5 & 6  
Will. 4, c. 50,  
ss. 78, 79;  
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1897.

Assault—  
Arrest—  
Bicyclist  
riding with-  
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Highway  
Act, 1835—  
Local Govern-  
ment Act,  
1888—5 & 6  
Will. 4, c. 50,  
ss. 78, 79;  
51 & 52 Vict.  
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*Avery* in reply.—The case was as to the right of the constable to stop. If such stopping was not an assault in law, then every action for false imprisonment—which is in form an action for assault—would fail. The Act 14 & 15 Vict. c. 19 (the Prevention of Offences Act, 1851) was specially passed to deal with offences committed at night, and to enable a person to be apprehended when committing at night any of those offences, thereby showing that the fact of the offences being committed at night made no difference, but that a special authority to arrest was necessary.

COLLINS, J.—I have come to the conclusion in this case that the argument of the appellant must prevail, as it seems to me that the provision in sect. 85 of the Local Government Act, 1888, which declares bicycles to be carriages, does not include the power to apprehend which is given by sects. 78 and 79 of the Highway Act, 1835. The question arises in this way: The appellant was riding a bicycle on a highway without having a lamp lighted in such a manner as is provided and required by sect. 85, sub-sect. 1 (a) of the Local Government Act, 1888, and no doubt the appellant had failed to comply with the provision of that section. The question is, whether that justified the respondent in stopping the appellant in the way in which he stopped him. It was contended for the appellant that the police constable had no implied authority to arrest a person for the offence created by the section, even though such offence was committed in his presence, unless the Act gave such power to arrest; and it was said that the police constable in stopping the appellant was guilty of an assault. The action of the constable was, in my opinion, an assault, and I think that a summons for an assault was properly taken out if the respondent had no statutory authority to act as he did. The question is, whether we can find such statutory authority. The Highway Act, 1835, in sect. 78, deals with drivers and owners of carts and other carriages which are being driven along highways, and after laying down various provisions with respect thereto, the section goes on to say that “every driver so offending in either of the said cases shall and may, by the authority of this Act, be apprehended, with or without warrant, by any person who shall see such offence committed;” and then sect. 79 gives power to any person who witnesses the commission of any offence against the Act, by a person whose name is unknown, to seize and detain such unknown person without any authority other than the Act. That being the position under the Act of 1835, then came the provision in sect. 85 of the Local Government Act, 1888, whereby bicycles were declared to be carriages within the meaning of the Highway Acts, and “additional regulations” with regard to the same were enacted. It was contended that these additional regulations were to be read into the provisions of sects. 78 and 79 of the Act of 1835, and that therefore there was a power to stop and detain the appellant as a person whose

name was unknown, and who was committing the offence at the time. That is the main point we have to deal with, and we are dealing here with a question of the liberty of the subject, that is, with the case of a person who was arrested. It seems to me that we cannot adopt the contention for the respondent. The Legislature adopted the course they have taken because they thought it necessary for some purposes to say that bicycles should be carriages within the Highway Acts, and they proceeded in this sect. 85 of the Act of 1888 to make special regulations, the first of which, as to lighted lamps, is the one now in question, and the second of which has reference to the sounding of a bell or whistle; but to hold that these special regulations as to bicycles are to be included in the provisions of sects. 78 and 79 of the Act of 1835, it would be necessary to read a new section into the Act. This section creates the offence and deals with it, and introduces the sections of the Highway Act in a matter which does not contain this offence, and it provides a special remedy for the offence. This, the only statute which creates the offence, does not give the power which is claimed for the respondent in this case. I think, therefore, that the justices were wrong, and that the case must be sent back to them to be dealt with.

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TREBBY.  
—  
1897  
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Bicyclist  
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ment Act,  
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RIDLEY, J.—I agree. The words of the 86th section are not wide enough to include the provisions in the Highway Act giving power to arrest. To do that which the respondent contends for would be in effect to add a provision to the Act which it does not contain.

*Appeal allowed. Case remitted to justices to convict.*

Solicitors for the appellant, *Gregory, Hirst, and Sandford*, Bristol.

Solicitors for the respondent, *Ford and Ford*, for *Wansbrough, Dickenson, Robinson, and Tayler*, Bristol.

## QUEEN'S BENCH DIVISION.

*Saturday, July 31, 1897.*

(Before COLLINS and RIDLEY, JJ.)

THE LONDON COUNTY COUNCIL (apps.) v. Wood (resp.). (a)

*Highways—Locomotive—"User" on highway—Locomotive passing over highway from one locality to another—Licence—Bye-laws—Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), s. 32.*

*The passage of a steam-roller or other locomotive along a highway upon its journey from one locality to another is a "user" on the*

(a) Reported by W. W. ORR, Esq., Barrister-at-Law.

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*highway within the meaning of a bye-law made by a county authority, which provided that "no locomotives shall be used on any highway within the county until an annual licence for the use of the same shall have been obtained by the owner thereof"; and the owner of the locomotive so passing along the highway is liable to the penalty imposed by sect. 32 of the Highways and Locomotives Act, 1878, unless he has obtained a licence from the county authority as provided by the bye-law.*

CASE stated by the metropolitan police magistrate sitting at Woolwich Police Court.

On the 9th day of February, 1897, an information which had been laid on behalf of the London County Council (the appellants) against the respondent was heard before the learned magistrate at the Woolwich Police-court.

The information charged that on the 3rd day of November, 1896, at High-street, in the parish of Eltham, in the county of London, and within the metropolitan police district, the respondent did unlawfully use a locomotive on a highway in contravention of a bye-law made by the appellants prohibiting a locomotive being used on any highway within the said county until an annual licence for the use of the same should have been obtained from the appellants by the owner thereof whereby the respondent became liable to the penalty provided by sect. 32 of the Highway and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), and the Local Government Act, 1888.

The Highways and Locomotives (Amendment) Act, 1878, provides :

Sect. 32. A county authority may from time to time make, alter, and repeal bye-laws for granting annual licences to locomotives used within their county, and the fee (not exceeding ten pounds) to be paid in respect of each licence, and the owner of any locomotive for which a licence is required under any bye-law so made who uses or permits the same to be used in contravention of any such bye-law, shall be liable to a fine not exceeding forty shillings for every day on which the same is so used. All fees received under this section shall be carried to and applied as part of the county rate. This section shall not apply to any locomotive used solely for agricultural purposes.

Sect 38. Locomotive means a locomotive propelled by steam or by other than animal power.

The appellants, as being the county authority, under the powers of this section made bye-laws "relative to the licensing and use of locomotives in the county of London (exclusive of the city of London)." No. 1 of which bye-laws was as follows :

No locomotive shall be used on any highway within the county of London until an annual licence for the use of the same shall have been obtained from the council by the owner thereof, nor at any time after the expiration of any such licence unless a further licence shall be obtained in respect of such locomotive.

No. 3 provided :

The licence fee for a locomotive shall be 10*l.* a year.

Provided that if at the time of the application for the licence such owner notifies to the council or its clerk that he does not desire to use the locomotive within the county of London on more than six days during the continuance of the licence, and that the locomotive has within three months prior to such application been licensed for use in

another county, and shall produce to the clerk of the council, the licence so granted, such owner shall in substitution for the fee of 10*l.* hereinbefore specified, pay to the council a fee of 30*s.*; and a licence for which 30*s.* is paid is hereinafter referred to as a travelling licence.

No. 4 provided :

The licence fee for a locomotive known as a steam-roller shall be 5*l.* a year.

At the hearing the following facts were proved or admitted :

(1) The respondent was an engineer carrying on business at Crickenhill in the county of Kent, and was the owner of the steam-roller now in question. He had not obtained any licence to use the steam-roller within the county of London.

(2) On the 3rd day of November, 1896, the steam-roller was by the directions of the respondent being driven along a highway known as High-street, Eltham, in the county of London.

(3) The steam-roller was not being so driven for any purpose of rolling the highway, but was passing along the highway in the course of a journey from Crickenhill, in the county of Kent, to Ealing, in the county of Middlesex, where it was to be temporarily employed in road-making. In the course of such journey it would travel for a distance of about sixteen miles along highways within the county of London.

It was contended for the respondent that, as the steam-roller was only passing along the highway for the purpose of proceeding to another district, such steam-roller was not being "used" within the meaning of the bye-law.

It was contended for the appellants that the steam-roller was being used to go to Ealing and earn money there; that it was being used as a locomotive, because it was being propelled by steam from one place to another, and that the intention of the 32nd section was to make all persons who should use and wear the highways by means of any locomotive contribute by paying a licence fee to the county rate.

The learned magistrate decided that the mere passage of the steam-roller over the highways within the appellants' district, while crossing from one locality to another, as hereinbefore described, was not such a "user" on the highway as was contemplated by the bye-law, and he accordingly dismissed the information.

The question for the opinion of the Court was whether, upon the facts above stated, the steam-roller was "used" within the meaning of the bye-law.

*Dalry* for the appellants. —The learned magistrate came to a wrong decision in this case. The question is whether the steam-roller was "using" the highway when passing over the highway from one place to another where it was to be used in road-making. I submit that on such journey it was using the highway just as much as if it had been engaged in doing some work on the highway. The intention of the Acts and the bye-laws dealing with this matter, was not to tax steam-rollers or locomotives as such, but to protect the highway from injury, and to

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compel those who wear down the roads by locomotives passing over the same to contribute something to the county rate in respect of such injury to the roads. In the case of locomotives generally, travelling is a "user" which has to be paid for specially by means of a licence, and this steam-roller was as much a locomotive when travelling along the road as it would be at any other time, even when working on the road. Sect. 31 of the Act, immediately preceding the section now in question, gives power to make bye-laws for (among other things) regulating the use of locomotives on highways, and it is clear that in that section "use" on the highway includes a journey over the highway. The only authority at all touching the question is the case of *Bell v. Stockton Tramway Company* (51 J. P. 804), where Mathew and Cave, JJ. held, that steam engines authorised by statute to be used on tramways are not locomotives within sect. 32, and do not require to be licensed by the county authority.

The respondent did not appear.

COLLINS, J.—We have not had the advantage in this case of hearing an argument in support of the view taken by the learned magistrate, but in the absence of that assistance I must say that the point appears to me to be reasonably clear, and I feel compelled to differ from the view taken by the learned magistrate. The case arises in this way. The Highways and Locomotives Act, 1878, provides that the county authority may make bye-laws for granting annual licences for locomotives used within their county, &c. In this case the owner of a steam-roller was with the steam-roller proceeding along a road within the jurisdiction of the London County Council, and he was proceeding for the purpose of fulfilling some contract of employment in the adjoining county of Middlesex. The steam-roller was not actually at work in mending roads, but it was on its way travelling and passing over a highway in order to fulfil its contract at its destination when it arrived there. Under these circumstances the point was taken that the owner ought to have had a licence, and that, not having had a licence, he was subject to a penalty within the provisions of the section, if there were a bye-law applicable to the case. As bye-laws have been made here they are applicable to the case, and by these bye-laws it seems to me that they clearly contemplated the passage of a locomotive along a highway—and this steam-roller is a locomotive—as a user of the highway which would oblige the owner to have a licence. It is true that they provide for mitigating the full rigour of the bye-law by allowing a person who will assert that he does not intend to use the locomotive within the county of London on more than six days during the continuance of the licence, and who proves that he has a licence in another county, to have what is called a travelling licence on reduced terms. It is obvious that unless he can bring himself within these provisions he will be, within the view of the bye-laws,



liable to the whole amount of the licence. It seems to me to be the intention of the bye-laws that a person who uses the locomotive for the purpose of travelling from one place to another in order to do work when he gets there, should be taken to use the highway. That being the intention of the bye-law, it seems also to be the intention of the Act itself under which the bye-law is made. The provision we are here dealing with is in a highway Act, which is obviously an Act for the protection of highways. Now these locomotives use the highway whether they are merely passing over the highway, or whether they are drawing a load upon it, and generally speaking the locomotive is much the more serious factor in the case. Even where you have a traction engine dragging a load, the traction engine itself is generally much more likely to injure the highway than the load that follows it. That is much more so in the case of a steam-roller, the action of which on the roads appears to be just as injurious, whether it is engaged in making the road or passing over it. It is the same weight passing over it, and it does the mischief which, we may presume, the Legislature intended to deal with. But a locomotive is merely a mechanical appliance for passing from one place to another. Take, for example, the case of a horse—a living instrument, which is capable of fulfilling the same purpose. If one were to borrow a horse for the purpose of drawing a load at a place ten miles off, and ride the horse to that place, would anyone say that he was not using the horse when he was passing over the ten miles? It seems to me it is obvious, as a matter of common sense, that such person would be using the horse on that journey. He is not using the horse in the sense of doing the work he is actually engaged to do, but he is using it for a purpose ancillary to it. He is using it for the purpose of carrying him and itself to the destination where he is going to do his work. I am clearly of opinion that the learned magistrate in this case was wrong.

RIDLEY, J.—I am entirely of the same opinion. I will only add one illustration that occurs to me. Take the case of a railway: If a locomotive engine is travelling from the shed where it has been got ready to be attached to the train to which it is to be attached in order to take that train to some other destination, surely the locomotive is being used while it is going from the shed to the train to which it is to be attached. I think, in the same way, this locomotive was being used on the highway.

*Appeal allowed. Case remitted to the magistrate.*

Solicitor for the appellants, *W. A. Blaxland.*

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## QUEEN'S BENCH DIVISION.

*Tuesday, Aug. 3, 1897.*

(Before LAWRENCE and COLLINS, JJ.)

GRANGE (app.) v. SILCOCK (resp.). (a)

*Dogs—Injury by, to cattle or sheep—Sheep trespassing—Injury to sheep while trespassing—Liability of owner of dog—Dogs Act, 1865 (28 & 29 Vict. c. 60), s. 1.*

*The plaintiff's sheep were trespassing on the defendant's field, which adjoined the plaintiff's land, and, while the sheep were being driven by their owner back to his own field, the defendant's dog, which was in the field where the sheep were so trespassing, worried and killed one of the sheep. The defendant had several times warned the plaintiff to prevent his sheep from trespassing on his land.*

*Held, that, under sect. 1 of the Dogs Act, 1865, the owner of the dog was liable for the injury done by his dog to the sheep, although such sheep was trespassing on his land at the time when the injury was inflicted.*

CASE stated by justices of the peace for the city of Sheffield.

The defendant was summoned before the court of summary jurisdiction sitting at Sheffield, to answer the plaintiff's claim for 1l. 5s., damages for injury done to a sheep belonging to the plaintiff by a dog belonging to the defendant.

The summons was issued under sect. 1 of the Dogs Act, 1865 (28 & 29 Vict. c. 60), which provides :

The owner of every dog shall be liable in damages for injuries done to any cattle or sheep by his dog; and it shall not be necessary for the party seeking such damages to show a previous mischievous propensity in such dog, or the owner's knowledge of such previous propensity, or that the injury was attributable to neglect on the part of such owner. Such damages shall be recoverable in any court of competent jurisdiction by the owner of such cattle or sheep killed or injured. Where the amount of the damages claimed shall not exceed five pounds, the same shall be recoverable in a summary way before any justice or justices sitting in petty sessions, under the provisions of the Act (11 & 12 Vict. c. 48).

The following facts were admitted or proved :

That the defendant was the owner of a dog which worried and killed a sheep the property of the complainant, or plaintiff. That, at the time the defendant's dog worried the plaintiff's sheep, such sheep, along with a number of others, was trespassing upon the land of the defendant, which adjoins that of the plaintiff on the

(a) Reported by W. W. ORR, Esq., Barrister-at-Law.

outskirts of the city of Sheffield. That, at the same time, the plaintiff or his servants were driving such sheep off the defendant's land back to the land of the plaintiff, and that the defendant's land was separated from the plaintiff's land by a stone wall about 4ft. high, but it was not proved to whom such stone wall belonged. That the sheep were Scotch horned sheep of a wild character, and capable of jumping any ordinary fence, and that the plaintiff had been warned several times by the defendant to prevent his sheep from trespassing upon the defendant's land. That the land of both the defendant and the plaintiff was of a moorland character, and that the actual damage done by such sheep having trespassed was nominal.

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For the defendant it was contended that he was not liable in damages for the injury done to such sheep by his dog, for the reason that the sheep, when so worried, was trespassing upon the defendant's land where the dog was for the purpose of protecting the grass from being eaten by the plaintiff's sheep; and that, as the plaintiff had been warned on several occasions to keep his sheep within bounds, he was guilty of negligence in allowing them to stray upon the defendant's land.

For the plaintiff it was contended that the defendant was liable in damages for the injury done to the sheep by his dog, whether such injury was or was not done on the land belonging to the defendant where such dog properly was.

The defendant did not allege that, beyond warning the plaintiff, he had made any attempt to protect his property either by impounding the plaintiff's sheep or by claiming compensation for damage caused by them; and it appeared to the justices that he had resorted to the plan of driving off the sheep by means of the dog which resulted in the injury to the sheep.

The justices were of opinion that, under the words of the section, "the owner of every dog shall be liable in damages for injury done to any cattle or sheep by his dog," they were not called upon or entitled to take into consideration the questions which might have arisen between the parties in an action for trespass by or injury to the sheep in another Court, but that the defendant, the owner of the dog, was, under that section, liable before them for the injury done to the sheep by his dog, about which, as a fact, there was no dispute; and that, therefore, they were bound to construe literally the words of the section, and enforce payment of the amount by their order. They accordingly made an order that the defendant should pay 15s. for damages and 6s. for costs.

The question now was, whether the justices were right in making such order.

*Arthur Sims* for the appellant (the defendant).—The justices were wrong in their construction of the statute, and their decision is based upon a total misconception of what the section means. They say they construed the words literally, but that cannot be a proper way to construe the section in a case such as the present,

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where an injury was inflicted by a dog upon a sheep. They were bound to take into consideration the circumstances under which the injury was committed. The sheep were trespassing at the time, and, though I admit that that does not give a right to set a dog on the sheep so as to worry them, yet it does not render the owner of the dog liable in a case where he himself does nothing, but where his dog kills a sheep which is trespassing on his land. At common law if a wild beast inflicted an injury it was not necessary to prove *scienter*; but if a dog inflicted an injury it was necessary to prove *scienter* before this Act was passed. The Act was passed with the sole object of taking away the necessity of proving *scienter* in the case of injuries inflicted by dogs upon cattle or sheep, and so far dogs were placed in the same category as wild beasts in respect of these injuries. All that the Act does is to remove the necessity of proving *scienter*; it merely says it shall not be necessary to prove *scienter*. *Rylands v. Fletcher* (19 L. T. Rep. 220; L. Rep. 3 H. of L. 330) shows that, if a person keeps a dangerous thing on his premises, he is not liable so long as he does not allow it to escape from his own premises; it is otherwise if he allows it to escape. [COLLINS, J.—How do you deal with the case of a man being held liable for injury caused by placing a spring gun in his own ground?] The old common law rule with regard to man-traps and spring-guns on a person's land was that the person was liable generally for injuries caused by them. That rule was not applicable to the case of a wild beast: (*Rylands v. Fletcher (ubi sup.)*). If a person is a trespasser and is injured by reason of the trespass the owner is not liable, even in the case of a wild beast. He also referred to *Ponting v. Noakes* (70 L. T. Rep. 842; (1894) 2 Q. B. 281).

*Deans*, for the respondent, was not called upon to argue.

LAWRANCE, J.—The justices came to a perfectly right conclusion in this case—the only conclusion, in fact, to which they could properly come. Upon reading sect. 1 of the Dogs Act, 1865, we see that the object of it was to render it unnecessary for the owners of cattle and sheep injured by dogs to show a “previous mischievous propensity in such dog, or the owner's knowledge of such previous propensity.” The cases cited for the appellant are not the same as this case. Here the sheep was trespassing, and the appellant's dog worried and killed it, and, unless the Act says that in such a case there is a right to kill the sheep, the owner of the dog would be liable. The respondent was driving his sheep off the field, and the dog appears in the field, and, though the owner of the field would have a right to drive the sheep off his field, he would not be justified in setting his dog upon the sheep so as to worry or kill the sheep. Here the appellant was not in the field at all, but his dog not only worried the sheep, but killed it. It seems to me that that was the very thing that was intended to be met by the statute, which, so far as *scienter* was concerned, placed cattle and sheep in a better position than human beings.

COLLINS, J.—I am of the same opinion. The words of the statute are absolute, and make no exception in favour of injuries caused by a dog to a sheep which is trespassing, such as the injury caused by the dog to the sheep in this case. I can concede that the words of the statute may and must be read with some qualification. For instance, if a wild bull come into my ground, and my dog, in turning him off, kills him, it may be that there would be a defence under the statute. That point does not arise here. The dog could not be in a better position than his master. The owner of the dog would have no right to kill the sheep while trespassing on his land; he has only a right to drive them off, using no more violence than is necessary for that purpose. In this particular place where the sheep were trespassing the dog was there without its master, while the sheep were being driven off, and he worried and killed the sheep. It seems to me that that is within the absolute words of the statute, and it is unnecessary to inquire whether there might not be cases to which the words of the section ought not to be applied literally.

*Appeal dismissed Leave to appeal refused.*

Solicitors for appellant, *Campion and Simmons*, for *A. Muir Wilson*, Sheffield.

Solicitor for respondent, *A. S. C. Doyle*, for *C. Robinson*, Sheffield.

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*Dogs Act,*  
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*Sheep*  
*trespassing*  
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—28 & 29 Vict.  
c. 60, s. 1.

## QUEEN'S BENCH DIVISION.

*Wednesday Aug. 11, 1897.*

(Before LAWRENCE and COLLINS, JJ.)

REG. v. BURTON AND ANOTHER (Justices); *Ex parte* YOUNG. (a)

*Justices—Disqualification—Bias—Interest—Charge against unqualified person for acting as solicitor—Prosecution by Incorporated Law Society—Member of society sitting as justice.*

*A justice of the peace is not disqualified, by reason of the fact that he is a member of the Incorporated Law Society, from adjudicating upon a case where the accused is charged with wilfully and falsely pretending to be a solicitor, and where the proceedings are taken by the Incorporated Law Society.*

**R**ULE calling on justices of the peace for the borough of Tunbridge Wells to show cause why a writ of *certiorari*

(a) Reported by W. W. ORR, Bart., Barrister-at-Law.

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should not issue to remove and quash a conviction whereby one Alfred Young was convicted for wilfully and falsely pretending to be a solicitor, on the ground that Mr. John Burton, one of the justices in question, was interested in the matter of the information, and of the conviction thereon, being a practising solicitor and a member of the Incorporated Law Society.

A letter, written by the applicant for the rule, threatening that if a certain sum of money were not paid proceedings would be taken, was brought to the notice of the Council of the Incorporated Law Society, who determined to take proceedings against the applicant under sect. 12 of the Solicitors Act, 1874, and on the 23rd day of February, 1897, the secretary of the Incorporated Law Society wrote to the secretary of the Kent Law Society, instructing him to take proceedings on behalf of the society, and the latter intrusted the case to a solicitor of Tunbridge Wells, who undertook the prosecution.

The applicant was then summoned for having wilfully and falsely pretended to be a solicitor.

The chairman of the justices who sat at the hearing of the case at Tunbridge Wells on the 12th day of April, 1897, was Mr. Burton, who is a solicitor practising at Tunbridge Wells, and before the case was called on the defendant's solicitor directed the attention of the clerk to the justices to the fact that the chairman was a practising solicitor; but, beyond that, no question was raised or objection made by the defendant or his solicitor to the jurisdiction of Mr. Burton; and at the conclusion of the hearing the defendant's solicitor asked that a case should be stated on points that had arisen, so that, for the purpose of the present case, the objection that Mr. Burton was a practising solicitor was considered to have been waived.

The secretary of the Incorporated Law Society stated in his affidavit that the society is managed by a council elected annually by the members, but that the members individually take no part in controlling or managing the affairs of the society; that Mr. Burton is a member of the Incorporated Law Society, but not a member of the council, and that therefore he has no power to interfere with or control its proceedings, and that he had no voice in the institution or conduct of the prosecution of the applicant; and that no part of the penalty was or is received by the society in such a case, and that Mr. Burton could not be benefited pecuniarily or otherwise by the success of the prosecution, and could not in any way become liable for any costs or expenses in reference to the proceedings in the event of their failure.

Mr. Burton in his affidavit stated that he was a solicitor practising in Tunbridge Wells since 1873, and a member of the Incorporated Law Society, and a justice of the borough since 1893, that he acted as chairman of the justices in petty sessions at Tunbridge Wells when the case of the applicant was heard and determined, but that until the case was called on he had no knowledge of it, or that any such charge was coming on for hearing.



*Hollams* showed cause.—The fact that Mr. Burton was a practising solicitor was known to the applicant's solicitor at the hearing of the case and no objection was taken. That ground of objection is therefore waived. The grounds on which a justice has been held to be disqualified from sitting are bias, pecuniary interest, and the fact of his being a prosecutor in the case. The question is, whether Mr. Burton, by reason of his being a member of the Incorporated Law Society, was disqualified upon any of these grounds. He was not disqualified on the ground of bias, as the bias, to disqualify, must be a real and substantial bias (*Reg. v. Mayor of Deal*, 45 L. T. Rep. 439), and there could not have been any such bias in this case; or on the ground of pecuniary interest, as there was none; or on the ground of his being a prosecutor in the case. It is true that Mr. Burton was a member of the Incorporated Law Society, but he was not a member of the council of the society, and it is the council only who direct these prosecutions and manage the business of the society. He was, therefore, not a prosecutor, and was not disqualified on that ground: (*Lesson v. General Council of Medical Education and Registration*, 61 L. T. Rep. 849; 43 Ch. Div. 366). This conviction ought, therefore, to be affirmed.

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*Heatall* in support of the rule.—The statements in the affidavit of the applicant entirely disprove the suggestion of waiver as to the ground of objection that Mr. Burton was a practising solicitor. The fact of his being a practising solicitor was a ground of disqualification by reason of bias in such a case as the present, where the charge was for wilfully and falsely pretending to be a solicitor: (*Reg. v. Huggins*, 72 L. T. Rep. 193; (1895) 1 Q. B. 563). The true principle of disqualification on the ground of bias is not that there must be a real and substantial bias, but that, having regard to the circumstances existing before the justices adjudicate, there is a real apprehension of bias, and it is sufficient that the justice might have been influenced: (*Reg. v. Huggins (ubi sup.)*; *Reg. v. Gaisford*, 66 L. T. Rep. 24; (1892) 1 Q. B. 381; *Reg. v. Henley*, 66 L. T. Rep. 675; (1892) 1 Q. B. 504). The second ground of disqualification is pecuniary interest, and any pecuniary interest, however slight or small, is sufficient to disqualify: (*Reg. v. Hammond*, 9 L. T. Rep. 423; *Reg. v. Gaisford (ubi sup.)*). Here there was a pecuniary interest, which, although small, was sufficient to disqualify, namely, the fact that Mr. Burton, as being a member of the Incorporated Law Society, might have been liable to pay his proportionate share of the costs if this information had been dismissed, and the justices had ordered the society, as being the prosecutors in the case, to pay the costs. Although any penalty imposed may not go to the society, yet, if the complaint were dismissed with costs, the costs would have to be paid by the society of which Mr. Burton is a member, and though the property is managed by the council, yet such property is the property of the society in general, and



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if the society were dissolved each member would no doubt get a share, which share would be diminished by the payment of costs. The question of disqualification arising from the liability to pay costs, was dealt with by Cotton, L.J. in *Leeson v. General Council of Medical Education and Registration* (*ubi sup.*), where he says (43 Ch. Div. pp. 380-1: "The expenses of the complaint could not be thrown by the medical council on Dr. Leeson, the person complained of. They had no power to give any costs." That distinguishes *Leeson's* case from the present, where there is a liability to pay a part of the costs. There is a third disqualification apart from bias or pecuniary interest, namely, where the justice is either by himself or his agent a prosecutor in the case. Mr. Burton was a prosecutor in this case, not by himself but by his agent, and that was a ground of disqualification: (*Reg. v. Allen*, 4 B. & S. 915; s. c. *Reg. v. Hodgson*, 9 L. T. Rep. 761; per Fry, L.J. in *Leeson v. General Council of Medical Education and Registration* (*ubi sup.*). It has been said that he was a member of the society only, but not of the council, and that the council only are the prosecutors; but this objection is answered by the case of *The Company of Mercers, &c. of Chester v. Bowker* (1 Str. 639). The case of *Reg. v. Mayor of Deal* (*ubi sup.*) is distinguishable from the present case, as there the justice whose conduct was in question was merely a subscriber to the society and not a member as here. He also referred to *Reg. v. Fraser* (9 Times L. Rep. 613; *Allison v. General Council of Medical Education and Registration*, 70 L. T. Rep. 471; (1894) 1 Q. B. 750).

LAWRANCE, J.—In this case the rule was obtained on behalf of a person named Young, calling on the justices of Tunbridge Wells to show cause why a conviction of Young should not be set aside; and the rule was obtained upon the ground that Mr. Burton, one of the justices, was in some way interested so as to make it improper that he should be a member of the Court deciding the case. I quite agree with what was said by Wills, J., in *Reg. v. Huggins* (*ubi sup.*), that "It is impossible to overrate the importance of keeping the administration of justice by magistrates clear from all suspicion of unfairness." The question is, whether this case comes within the principle of the cases referred to, by which a justice is disqualified from sitting as being an interested person. One of three things must be present to disqualify a person. First, there must be bias, or the strong probability of bias, and not merely the possibility of bias, on the part of the person who is about to adjudicate in the case. There is no suggestion here upon the affidavits that Mr. Burton did not act *bonâ fide*, and there is no suggestion of any actual bias. But it is said that the fact of his being a practising solicitor, and the accused being a person who pretended to be a solicitor, would show a bias which would prevent him from sitting. A second ground which would make it improper for a person to occupy a position on the Bench would be that he is

interested pecuniarily or otherwise ; and it is said that Mr. Burton was so interested because he was not only a practising solicitor, but also a member of the Incorporated Law Society. The third ground of disqualification is the fact that a person is taking a leading part in the prosecution, as a man cannot be both prosecutor and judge in the same cause. Dealing with these objections in order, the first was that Mr. Burton was a practising solicitor, and *Reg. v. Huggins (ubi sup.)* was cited to show that upon that ground he ought not to have sat. In that case a qualified pilot was sitting upon the bench to inquire into a charge against an unqualified pilot, and the ground on which the objection was put in that case was—not that a person who was interested in that way was not to sit—but that there were only a few qualified pilots in that particular district, and Wills, J. specially guards himself by saying that the fact that the justice was a member of a small class of privileged persons for whose protection the proceedings were taken made all the difference in the case. That is the ground upon which that case is based ; but it is unnecessary to deal further with the first point, or to decide it, as it has been admitted that there has been a waiver with regard to Mr. Burton being a practising solicitor, but not with regard to his being a member of the Incorporated Law Society. In the next place, it is said that he had a pecuniary interest in the result because an order for costs might have been made against the society of which he was a member. It has been pointed out that he only subscribes a certain amount to the funds of the society and has no interest in the society further than that ; but it is said that the time might come when the society would be dissolved, and if it were dissolved then the funds in their hands would be divided *pro rata* among all the members, and if the costs were given against them in this case, there might be at a future time some infinitesimal interest which Mr. Burton would have in the funds of the society, which would be diminished by this payment of costs, and that that would be a pecuniary interest in the persons who were members. The decision in the case of *Reg. v. The Mayor of Deal (ubi sup.)* is an answer to that argument. There a person had been convicted and fined for cruelty to a horse, upon the prosecution of an officer of the Society for the Prevention of Cruelty to Animals. Some of the justices who heard the summons were subscribers to a branch of the society which received subscriptions in the country and forwarded them to the office of the society in London. All prosecutions were directed by the secretary or committee in London, and no subscriber had any authority over such prosecutions, and the society never accepted any part of the penalties inflicted, and there it was held that there was nothing in these facts to create a real bias in the minds of the justices which could amount to a disqualifying interest. In this case we are told that being a member of the Incorporated Law Society gives no power either to institute proceedings, or to take any part in, or to use any influence

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in regard to them, which is done by the council; and therefore it was said that Mr. Burton had no power in the institution of these proceedings. In *Reg. v. Mayor of Deal (ubi sup.)* one of the learned judges seems to make a distinction that what was in question there was only a branch of the society in London; but I myself cannot see the distinction. Cave, J. says this: "Any pecuniary interest, however slight or remote, is sufficient to disqualify; but here there seems to be none. Although the society's funds may be liable for the costs, or be benefited by a penalty, the subscribers would not be thereby affected." That seems to me to be precisely the position here. No benefit is likely to accrue to Mr. Burton, except that referred to upon the very remote possibility when this society shall be dissolved. Again, the Court in that case were of opinion that the liability to pay costs would not be such an interest as to disqualify the justices, and I think that the same reasoning applies here. There is no probability whatever of the Incorporated Law Society coming to an end, and the infliction of costs, therefore, would make no difference to the ordinary member. The question of penalty does not arise; and, if it did, the penalty would go into the funds of the society, and make no difference to the individual member. In the third place, it is said that the society was prosecuting, and that, therefore, Mr. Burton, as a member of the society, took part in the prosecution, and so was disqualified. That objection, I think, is sufficiently dealt with in the case of *Allinson v. The General Council of Medical Education and Registration (ubi sup.)*. I think, therefore, there was no bias, no interest pecuniary or otherwise, and that Mr. Burton was not engaged in any sense in the prosecution in such a way as to disqualify him from sitting as a magistrate, and that this case does not come within the principle of the authorities upon the question. The rule should therefore be discharged.

COLLINS, L.J.—I am of the same opinion. It is contended that Mr. Burton was disqualified on the ground of interest, which may be subdivided into two heads—first, that he was a practising solicitor; and, secondly, that he was a member of the Incorporated Law Society. The second of these two objections may also be subdivided into these two parts, that being a member of the Incorporated Law Society he was at once judge and prosecutor; and further that he had a pecuniary interest in the result. To deal with these objections in order—first, the objection that he was a solicitor was waived. That fact was known to the solicitor who represented the person accused, and being known the objection was not taken, and after the hearing the justices were asked to state a case, so that it is perfectly clear that this case must be dealt with on the footing that all objections special to the fact that Mr. Burton was a practising solicitor are eliminated from the case. There remains the objection that he was a member of the Incorporated Law Society. As to the first of the two heads into which that is

divisible, was he really prosecutor as well as judge? Judge he undoubtedly was; was he prosecutor? That depends upon his relation to the Incorporated Law Society. He was a country subscriber to the Law Society, and we have an affidavit from the secretary to the society, who tells us that the whole and sole responsibility for prosecutions rests with the council of the Law Society, of which Mr. Burton was not a member. He had no more to do with the prosecution than any individual in Court. It was undertaken without his knowledge or consent, and he had no voice either in forwarding it, or in stopping it. Therefore, he was in no sense really prosecutor. But that is not enough, because, although we may be absolutely assured that he had no bias as prosecutor, we must go further than that to put him in the position of a person who is entitled to adjudicate on the matter. To use the language of Lord Esher, M.R. in what must be regarded as the leading case upon this particular subject, the case of *Allinson v. The General Council of Medical Education and Registration* (*ubi sup.*), the person alleged to be biassed "must bear such relation to the matter that he cannot be reasonably suspected of being biassed." He puts that qualification upon the language used by Mellor, J. in *Reg. v. Allan* (*ubi sup.*), namely, that "It is highly desirable that justice shall be administered by persons who cannot be suspected of improper motives." Lord Esher, M.R. qualifies that by the words I have referred to, and the Court in that case came to the conclusion that Mr. Allinson's relation to the society was such that he could not be reasonably suspected of being biassed. That case was decided by myself in the first instance, and my judgment was confirmed by the Court of Appeal. It seems to me here that Mr. Burton's relation to the council gives less ground for any shadow of suspicion than there was even in *Allinson's* case. That disposes of the first two points, and there remains the point as to the possibility of pecuniary interest. As to that we must draw our inferences from the facts before us, and we find it stated in the affidavit of the secretary—a statement on oath by the person who knows the constitution of the society—that no part of the penalty in such cases goes to the society, and that Mr. Burton could not be pecuniarily interested in the success of the prosecution, or become liable in any way for any costs. Although I fully agree that any pecuniary interest, however slight, will defeat the right of justices to sit in judgment, I think that interest must be actual; it must not be purely speculative or imaginary, based upon conditions barely conceivable, and certainly not conceivable as likely to exist within the lifetime of the person said to be interested in the funds of the society. It is said that if this corporation, of which Mr. Burton is a subscribing member, were dissolved, there might be a distribution of assets, and that on that distribution the share of Mr. Burton might be more or less according to whether a penalty was received or costs made payable out of the

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funds of the society. That argument is sufficiently dealt with in the judgments of Field and Cave, JJ. in *Reg. v. The Mayor of Deal (ubi sup.)*, where they distinguish the position of a shareholder, whose fortunes are bound up with the company, from that of a subscriber whose liability can be no more or less than his subscription. Both the learned judges in *Reg. v. The Mayor of Deal (ubi sup.)* deal with two points, the right to receive the penalty if one is awarded, and the obligation to pay costs if costs are awarded, Field, J. dealing with one point, and Cave, J. with both. Taking the facts deposed to on affidavit, and these pronouncements on the part of the two learned judges in that case, I am perfectly satisfied that there is no evidence of any pecuniary interest in Mr. Burton. I am of opinion, therefore, that this rule must be discharged.

*Rule discharged.*

Solicitors for the applicant, *Lee, Ockerby, and Everington*, for *E. E. Robb*, Tunbridge Wells.

Solicitor for the Incorporated Law Society, *E. W. Williamson*.

## QUEEN'S BENCH DIVISION.

*Tuesday, Nov. 2.*

(Before WRIGHT and KENNEDY, JJ.)

GALLAGHER (app.) v. RUDD (resp.) (a)

*Licensing Acts—Intoxicating liquors—Licence—Theatre—Exemption—Theatres Act, 1843 (6 & 7 Vict. c. 68)—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 72—Licensing Act, 1874 (37 & 38 Vict. c. 49), s. 3.*

*The appellant, G., was the manager of the Theatre Royal, Stockton, and on the 2nd day of September, 1896, he was granted a licence for the theatre under the Theatres Act, 1843. By that licence the theatre was to be closed every Saturday night at half-past eleven.*

*On the 11th day of October, 1896, he was granted a theatre excise licence under 5 & 6 Will. 4, c. 39, and 43 & 44 Vict. c. 20, to sell intoxicating liquors by retail in the theatre.*

*On the evening of Saturday, the 23rd day of January, 1897, the performance concluded at the theatre at 10.55 p.m., but the appellant kept one of the bars of the theatre open for the sale of intoxicating liquors until 11.20 p.m.*

(a) Reported by W. DE B. HERBERT, Esq., Barrister-at-Law.



*All the people who were there present were either persons who were employed in the performance or had been bonâ fide attending the performance as spectators at the theatre that evening. The appellant was convicted.*

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*The present question for the decision of the Court was whether that conviction was right, the borough of Stockton being a town within the meaning of the Licensing Act, 1874, and the appellant being convicted of an offence under sect. 9 of the Licensing Act, 1874.*

*By the Licensing Act, 1872, sect. 72: "Nothing in this Act shall affect or apply to (4) the sale of intoxicating liquor by proprietors of theatres in pursuance of the Act in that behalf."*

*By the Licensing Act, 1874, that Act is to be construed as one Act with that of 1872, and by sect. 3, "All premises in which intoxicating liquors are sold by retail shall be closed as follows: (2) If situated . . . in a town . . . as defined by the Act; (a) on Saturday night from eleven o'clock."*

*For the appellant it was contended that the exemption contained in sect. 72 was an absolute exemption, and that a theatre duly licensed under the Acts in that behalf was exempt from this provision as to closing.*

*Held, affirming the decision of the quarter sessions, that, on the true construction of sect. 72, the exemption does not affect the proper closing hour, and that it only applies in that the holders of theatre licences need not go to the justices for a licence for the sale of intoxicating liquors.*

UPON an appeal by the above-named appellant against a certain conviction made on the 28th day of January, 1897, by the respondents, justices of the peace of the borough of Stockton-on-Tees, for that the appellant on the 23rd day of January, 1897, at the borough of Stockton-on-Tees, during a certain time, to wit, at 11.20 in the evening of the day, at which time premises for the sale of intoxicating liquors by retail elsewhere than in the metropolitan district, or a town as defined by the Licensing Act, 1874, are directed to be closed in pursuance of the Act, unlawfully did open certain premises called the Theatre Royal, and licensed for the sale of intoxicating liquors by retail, situate as aforesaid, for the sale of intoxicating liquors contrary to the statute in such case made and provided, by which conviction the appellant was fined, which said appeal came on for hearing at the general quarter sessions of the peace held in and for the county of Durham on the 7th day of April, 1897, when, upon hearing counsel for both parties, that Court dismissed the appeal, subject to the opinion of the Queen's Bench Division upon the following case:

1. That the appellant at the times hereinafter mentioned was the actual and responsible manager of the Theatre Royal at Stockton-on-Tees. The respondents are justices of the peace for the borough of Stockton-on-Tees. The respondent Thomas



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Henry Faber is clerk to the said justices and to the Court of summary jurisdiction sitting in and for the borough, and the respondent John Liddell is the superintendent of police of the borough.

2. On the 2nd day of September, 1896, the appellant was granted a licence to keep open the theatre for the public performance of stage plays therein, pursuant to the Theatres Act, 1843 (6 & 7 Vict. c. 68), of which licence, and of the rules annexed thereto, the following are copies :

County of Durham to wit.—At a special session of Her Majesty's justices of the peace of and for the county of Durham, acting for the Petty Sessional Division of the Stockton Ward in the said county holden in and for the said division, at the police-court, Stockton-on-Tees in the said division, on the 2nd day of September, 1896, for the purpose of granting licences to houses for the performance of stage plays in pursuance of the Theatres Act, 1843. We, the undersigned, being three of Her Majesty's justices of the peace, acting for the said division, present at this petty sessions, do hereby license John Gallagher, being the actual and responsible manager of a certain company of actors, commonly called or known by the name of the "Theatre Royal Company," to have and keep open a certain building called the Theatre Royal, situate at Stockton-on-Tees, in the division and county aforesaid, as and for a house and place of public resort for the public performance of stage plays under the provisions of the statute aforesaid for the space of twelve calendar months from the date hereof, provided that the said John Gallagher do observe and keep the rules for insuring order and decency at and in the said theatre so licensed by us, the said justices, and for regulating the times during which the said theatre shall be allowed to be open, a copy of which rules is annexed to this licence, pursuant to the statute aforesaid in the case made and provided.—Given under our hands and seal at this special petty sessions above mentioned, in open Court.

Rules (annexed).—(1) The theatre shall be closed every Sunday, Christmas Day, Good Friday, and days appointed for a public fast and thanksgiving. (2) The theatre shall be closed every Saturday night at the hour of half-past eleven. ( ) Police constables when dressed in uniform or other constables not so dressed, if known as such to the manager or his servants, shall be permitted to have free ingress to the theatre at all times during the time of public performance. (4) The manager shall to the best of his ability maintain and keep good order and decent behaviour in the said theatre during the hours of public performance. (5) For every breach of the above rules the manager shall forfeit and pay a penalty not exceeding five pounds.

3. On the 11th day of October, 1896, the appellant was granted a theatre excise licence under 5 & 6 Will. 4, c. 39, and 43 & 44 Vict. c. 20, to sell intoxicating liquors by retail in the theatre, of which licence the following is a copy :

5 & 6 Will. 4. c. 39, s. 7, 43 & 44 Vict. c. 20.—I, the undersigned, duly authorised by the Commissioners of Inland Revenue, hereby grant licence to Major John Gallagher to sell by retail in the Theatre Royal, situate in Yarm-lane, in the parish of Stockton, within the administrative county of Durham, spirits, wines, sweets, made wines, mead, metheglin, beer, cider, and perry from the day of the date hereof until the 10th day of October next ensuing in accordance with the terms of the licence granted by such theatre being rented or valued at the rent or annual sum of 500l., and he having paid for the licence 20l.—Dated this 11th day of October, 1896.

4. On the evening of Saturday, the 23rd day of January, 1897, the theatre performance concluded at the theatre at 10.55 p.m., but the appellant kept one of the theatre bars open for the sale of intoxicating liquors until 11.20 p.m., at which time two police officers entered the theatre by a door at the back (the public entrance being closed) and found between thirty and forty people in the bar behind the dress circle. All the persons present in the bar were either persons who were employed in the perform-

ance or had been *bonâ fide* attending the performance as spectators at the theatre that evening.

The appellant was convicted by the respondent justices and fined in the nominal penalty of 3s. 6d. and costs.

The borough of Stockton-on-Tees is a town within the meaning of the Licensing Act, 1874.

The question for the opinion of the Court is whether, under the circumstances, the appellant was guilty of an offence against sect. 9 of the Licensing Act, 1874.

If the Court shall be of opinion in the affirmative, then the order of sessions is to be affirmed; if in the negative, then the order of sessions is to be quashed.

By the Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 3 :

Nothing in this Act shall affect or apply to (4) the sale of intoxicating liquor by proprietors of theatres in pursuance of the Acts in that behalf.

By the Licensing Act, 1874 (37 & 38 Vict. c. 49), s. 3 :

All premises in which intoxicating liquors are sold by retail shall be closed as follows, that is to say : (2) if situate beyond the metropolitan district and in the metropolitan police district, or in a town or in a populous place as defined by this Act ; (a) on Saturday night from eleven o'clock until half an hour after noon on the following Sunday.

*Luck* for the appellant.

*Simey* for the respondents.

KENNEDY, J.—This is a case which is by no means free from difficulty, but, in my opinion, the conviction was right. What we have to consider is the true construction of sect. 72 of the Licensing Act, 1872. By this section theatres licensed in pursuance of the Acts in that behalf are exempted from the Act of 1872, and it is the nature of that exemption that we have to consider. Now, ought this exemption to be construed in its very widest sense, so that nothing in the Act is to affect in any way the sale of intoxicating liquors by proprietors of theatres ; or is it to be limited to any provision contained in the Act of 1872 or the Act of 1874 ? for both these Acts are to be read as one. Now, the proper construction of this section, in my opinion, is that the sale of intoxicating liquors in theatres is affected by the section to this extent, that, to get a licence for such sale, the proprietors of theatres need not go to the justices to get a licence as they would have to do under the Act, but that when licensed as a theatre, they can get an Excise licence merely. But I do not think that the section affects the proper closing hour. Unless there is some section of some Act which expressly exempts them from the provisions of sect. 3 of the Licensing Act of 1874, there is nothing, I think, to relieve the proprietor from having to close at the hour provided by the Act. On the whole this seems to be the proper construction.

WRIGHT, J.—There is great difficulty in this case, but the solution of my learned brother is the proper one. The question is, what is the meaning of sect. 72 of the Licensing Act of 1872 ? There are several possible meanings of this section, for the

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- theatre may either be absolutely exempted from the Act or exempted from the provisions as to the sale of intoxicating liquors. But I cannot think that this is so. The exemption is neither absolute nor limited to the acts of sale, but the exemption, according to the way in which I construe the section, is from interference with the statutes which regulate theatres, *e.g.*, exempting them from requiring a justices' licence.
- Conviction affirmed.*
- Solicitors for the appellant, *Hack and Morris*, for *Thos. Malkin*, Stockton-on-Tees.
- Solicitors for the respondents, *C. J. Archer and Parkin*, Stockton-on-Tees.

## JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

*Feb. 25 and Nov. 19, 1897.*

(Present: The Right Hons. the LORD CHANCELLOR (Halsbury), Lords WATSON, HOBHOUSE, and DAVEY, and Sir R. COUCH.)

BROWN *v.* ATTORNEY-GENERAL FOR NEW ZEALAND. (a)

ON APPEAL FROM THE COURT OF APPEAL OF NEW ZEALAND.

*Wife assisting husband in commission of crime—Marital control.**The mere fact of coverture raises no presumption of compulsion by the husband.**Where the evidence showed that a wife voluntarily aided in arrangements leading up to, and intended to assist, the commission of a criminal offence by her husband:**Held (affirming the judgment of the Court below), that she was rightly convicted, and that no question as to marital control should have been left to the jury.*

**T**HIS was an appeal against a decision of the Court of Appeal, Wellington, New Zealand, which, upon a case reserved, affirmed the conviction of the appellant.

On the fourth day of December, 1895, in the Supreme Court at Wellington, Annie Brown was charged jointly with her husband, and pleaded not guilty to the following indictment:

The jurors for our Lady the Queen present that John Henry Brown and Annie Brown on or about the tenth day of August in the year of our Lord one thousand

(a) Reported by C. E. MALDEN, Esq., Barrister-at-Law.

eight hundred and ninety-five, at Wellington, with intent to procure the miscarriage of a certain woman, to wit, one J. A. E., unlawfully did use a certain instrument to the jurors aforesaid unknown.

And the jurors aforesaid do further present that the said John Henry Brown and Annie Brown afterwards, to wit, on or about the day and year aforesaid, with intent to procure the miscarriage of the said J. A. E., did use certain means to the jurors aforesaid unknown.

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It appeared from her evidence that, in the month of August, 1895, she believed herself to be three months pregnant. In consequence of previous correspondence with a Dr. W. Wellington, she left home on Friday, the 9th day of August, and drove to the address given. There she was received by the appellant, who asked her name, and showed her into a room where she had an interview with Dr. W. She was then taken upstairs into a bedroom by the appellant, who waited on her so long as she remained in the house. Next day the appellant told her that another doctor was coming to perform the operation, as Dr. W. did not approve of such operations. Accordingly the male prisoner arrived, and told her that he would be back again directly, and she was to pay Mrs. Brown the fee. She paid the appellant 25/., and on his return the male prisoner performed the operation, which she described. The appellant continued to attend her. On Wednesday the witness left her bed, and on Friday she went home.

The appellant was not present when the operation was performed, nor on any of the occasions when medicine was brought to the witness; but, upon the finding of the jury under the direction of Prendergast, C.J., who tried the case, it must be taken that she was perfectly cognisant of the purpose for which E. came, and of the general nature and object of the operation which was performed.

On the application of the appellant's counsel the Chief Justice reserved a case for the opinion of the Court of Appeal, the material part of which was as follows:

This is a case stated under sub-sect. 6 of sect. 412 of the Criminal Code. Annie Brown was indicted jointly with John Henry Brown that they, with intent to procure the miscarriage of a certain woman named in the indictment, unlawfully did use a certain instrument. In a separate count the same persons were charged with using, with like intent, certain other means to the jury unknown.

A separate trial was applied for on behalf of the two: the application was granted. Annie Brown was tried first. On her trial she was convicted. The jury, in answer to a question put by me, found that Annie Brown was married to the male prisoner, and that she acted under his marital control. At the request of Annie Brown's counsel, I reserved the question whether the fact that the offence had been committed under the control or by the command of the husband was a defence. It was explained to the

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jury that there was no evidence of such compulsion as is mentioned in sect. 24 of the Criminal Code, and it must be taken that they did not intend by this finding that there had been such compulsion, but only command and control of the husband without such threats. The doubt is whether, since the passing of the Criminal Code, sect. 24, marital control or command is a defence.

On the hearing of the above appeal the case was amended by setting out the jury's special finding as follows :

If you find her guilty then I think you should say whether or not you find that she was married to the other defendant, and, if you find she was married to him, did she in the part she took in the commission of the crime act freely and voluntarily or under the control and coercion of her husband ?

*Answer.*—The jury find that the prisoner is married to the other defendant, and that she acted under his control.

The criminal law of New Zealand is constituted by the Criminal Code of 1893. The material sections of that code are the following :

Sect. 21.—All rules and principles of the common law which render any circumstances a justification or excuse for any act or omission or a defence to any charge, shall remain in force and be applicable to any defence to a charge under this Act except in so far as they are thereby altered or are inconsistent therewith.

Sect 24.—(1.) Except as hereinafter provided compulsion by threats of immediate death or grievous bodily harm from a person actually present at the commission of the offence, shall be an excuse for the commission by a person subject to such threats, and who believes such threats will be executed (and who is not a party to any association or conspiracy the being a party to which rendered him subject to compulsion) of any offence other than treason, murder, piracy, offences deemed to be piracy, attempting to murder, assisting in rape, forcible abduction, robbery, causing grievous bodily harm, and arson. (2.) No presumption shall be made that a married woman committing an offence does so under compulsion only because she commits it in the presence of her husband.

On the 22nd day of May, 1896, the Chief Justice certified to the Registrar of the Supreme Court at Wellington that, at a sitting of the Court of Appeal held on the 27th day of April, 1896, it was adjudged that the conviction be affirmed.

It appears that the judges thought that the common law doctrine of marital coercion was swept away by the code, and that sect. 24 was substituted for it ; that a wife was in exactly the same position as any other person, and could only plead such a compulsion as was defined by that section.

Annie Brown obtained special leave to appeal from this decision.

*J. D. Mayne* appeared for the appellant, and argued that the common law doctrine of marital coercion was preserved by sect. 21 of the Criminal Code of New Zealand, and was not abolished by sect. 24 ; consequently, the English common law doctrine remained in force in the colony, as before the passing of the code, and this was a case in which it applied. He cited *R. v. Price* (8 C. & P. 19).

Sir *R. Reid*, Q.C. and *English Harrison*, who appeared for the respondent, were not called upon to address their Lordships.

At the conclusion of the arguments for the appellant their



Lordships stated that they would advise Her Majesty to dismiss the appeal, and would give their reasons at a later date.

Nov. 19.—Their Lordships' reasons were delivered by

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The LORD CHANCELLOR (Halsbury).—Their Lordships intimated at the hearing of this appeal that they would humbly recommend to Her Majesty that it should be dismissed. They think it right to add now that, if the facts had been understood at the time application was made for leave to appeal, that leave would not have been granted. It is a little difficult to understand why, even at the original trial, any question was reserved for the Court of Appeal in the Colony. In the case stated by the Chief Justice it is said that, at the request of the prisoner's counsel, he reserved the question whether the fact that the offence had been committed under the control or by the command of the husband was a defence. And, further on, the learned judge states that the doubt was whether, since the passing of the 24th section of the Criminal Code, marital control or command was a defence. That section is as follows: [His Lordship read the section as set out above.] Whatever may be the proper solution of these questions, their Lordships are of opinion that none of them arise upon the evidence set out in the case. There was no evidence, as the Chief Justice himself states in the case reserved, of any such compulsion as is referred to in the section in question. The offence charged was not committed by one in the presence of the other at all. The evidence upon which the prisoner was apparently convicted, and properly convicted, was the procuring and contriving the commission of the offence committed by the husband in her absence and under circumstances wherein the section above set out could have had no application at all. The Chief Justice states that the jury at the trial found that the prisoner was married to the other defendant, and that she acted under his control. For the latter proposition there is not a scintilla of evidence, and no such question should have been left to the jury. The mere fact that the parties are married never even formed a presumption of compulsion by the husband. Even as early as Bracton's time, if the wife was voluntarily a party to the commission of a crime, her coverture furnished no defence: (see Bracton, book 3, c. 32), who says: "Quid erit si uxor cum viro conjuncta fuerit, vel confessa fuerit quod viro suo consilium præstiterit et auxilium? Numquid tenebuntur ambo? imo ut videtur;" and he goes on to add, "sic ut sunt participes in crimine, ita debent esse participes in pœna." Questions have from time to time arisen how far the mere presence of the husband at the time of the commission of the offence should furnish a presumption of marital control, and the decisions on that subject have not been entirely uniform. But their Lordships are of opinion that here even that question does not arise. The acts attributed to the prisoner were acts done by herself in the absence of her husband, conclusively establishing that she was voluntarily acting and aiding and assisting in arrangements



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leading up to and intended to assist the commission of the offence which was afterwards consummated. Their Lordships are therefore of opinion that no such question was open upon the facts as detailed, and the finding of the jury is only intelligible on the ground that they supposed that the mere fact of coverture itself furnished legal evidence of compulsion within the rule of law, which view their Lordships are of opinion was entirely erroneous. It is for these reasons that their Lordships have thought it right humbly to advise Her Majesty that this appeal should be dismissed.

Solicitors for the appellant, *Royle and Co.*

Solicitors for the respondent, *Mackrell, Maton, Godlee, and Quincey.*

## QUEEN'S BENCH DIVISION.

Nov. 1 and 2, 1897.

(Before LINDLEY, M.R. and CHITTY, L.J. sitting as a Divisional Court.)

MURPHY (app.) v. ARROW (resp. (a))

*Betting—Betting house—Persons found therein—Jurisdiction of magistrate to require such persons to enter into recognisances—33 Hen. 8, c. 9, s. 14—Gaming Act, 1845 (8 & 9 Vict. c. 109), s. 3—Betting Act, 1853 (16 & 17 Vict. c. 119), s. 11.*

*Persons who are arrested under sect. 11 of the Betting Act, 1853, in a house which is a betting house within the meaning of that Act, may be brought before a magistrate, and the magistrate has jurisdiction, under sect. 14 of 33 Hen. 8, c. 9, to require such persons to enter into recognisances “no more to play, haunt, or exercise from thenceforth” at any gaming house, although the only evidence against such persons is that they were found in such house.*

CASE stated by Mr. De Rutzen, metropolitan police magistrate, sitting at the Marlborough-street Police-court.

On the 5th and 12th days of May, 1897, it was proved before the magistrate that the appellant and eighty-eight other men then present were arrested at a house—32, Gerard-street, Soho

(a) Reported by W. W. ORR, Esq., Barrister-at-Law.

—called the Frascati Club, on a warrant issued by the magistrate to the metropolitan police force under sect. 11 of 16 & 17 Vict. c. 119 (the Betting Act, 1853), and evidence was given that the premises were kept and used for the purpose of betting with persons resorting thereto.

Against four of the men so arrested information was subsequently laid and summonses granted under sect. 3 of 16 & 17 Vict. c. 119, for having kept the house for the purpose of betting with persons resorting thereto, or for having assisted in conducting the business of such house, and three of the men so summoned pleaded guilty and were fined, and the fourth was discharged.

The appellant and the eighty-four other men who had been arrested were then brought before the magistrate to be dealt with under the warrant, and the only evidence as to them was that they had been arrested by the police at half-past three o'clock on the afternoon of the 4th day of May, at 32, Gerard-street, Soho, known as the Frascati Club; that these premises had been kept and used by one Wilson for the purpose of betting with the persons resorting thereto, and that the betting was going on just prior to the entry of the police.

The magistrate was asked to discharge the appellant and the eighty-four other men, and his attention was called to the words, "persons there haunting, resorting, and playing" in sect. 14 of 33 Hen. 8, c. 9, and to the words, "used or exercised any unlawful game" in sect. 9 of 2 Geo. 2, c. 28; and it was contended that such words could not apply to the case of the appellant and the eighty-four other men, as they were merely arrested upon the premises without any evidence as to the length of time they had been there, or whether they had ever been there before, or even as to what individually they were actually doing there on the occasion in question.

It was further contended that, although a betting house within sect. 1 of 16 & 17 Vict. c. 119 is declared by sect. 2 to be a gaming house within 8 & 9 Vict. c. 109 (the Gaming Act, 1845), yet betting on horse races is not a game or an unlawful game, such as to make it "playing" within 33 Hen. 8, c. 9, s. 14, or "an unlawful game" within 2 Geo. 2, c. 28, s. 9, and that both these statutes affect only players of unlawful games, and do not extend to persons betting upon horse races in a betting house declared to be a gaming house by the statute.

On the other hand, the attention of the magistrate was called to the observations of Hawkins, J. in his judgment in *Jenks v. Turpin* (50 L. T. Rep. at pp. 818-819; 13 Q. B. Div. at p. 526), and to the subsequent practice of the magistrates of the police-courts of the metropolis in similar circumstances, and the magistrate declined to discharge the appellant and the eighty-four other men, and, following what he stated to be the hitherto unquestioned practice of his colleagues since the case of *Jenks v. Turpin* (*ubi sup.*), he ordered the appellant to be bound in his

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*Jurisdiction*  
—*Betting houses—*  
*Persons found in premises—*  
*Binding on recognisances*  
—33 Hen. 8, c. 9, s. 14;  
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16 & 17 Vict. c. 119, s. 11.

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own recognisances in the sum of 20*l*. “no more to play, haunt, or exercise from thenceforth” at any gaming house, pursuant to sect. 14 of 33 Hen. 8, c. 9.

The question now was whether the magistrate, sitting as a court of summary jurisdiction, upon the above state of facts came to a correct determination and decision in point of law.

The Betting Act, 1853 (16 & 17 Vict. c. 119), provides :

Sect. 2. Every house, room, office or place opened, kept, or used for the purposes aforesaid, or any of them—[that is, by sect. 1, for the purpose of betting with persons resorting thereto]—shall be taken and deemed to be a common gaming-house within the meaning of an Act of the session holden in the 8th and 9th years of Her Majesty, chapter 109, to amend the law concerning games and wagers.

Sect. 11. It shall be lawful for any justice of the peace, upon complaint made before him on oath that there is reason to suspect any house, office, room, or place, to be kept or used as a betting house or office, contrary to this Act, to give authority by special warrant under his hand, when in his discretion he shall think fit, to any constable or public officer, to enter, with such assistance as may be found necessary, into such house, office, room, or place, and, if necessary, to use force for making such entry, whether by breaking open doors or otherwise, and to arrest, search, and bring before a justice of the peace all such persons found therein, and to seize all lists, cards, or other documents relating to racing or betting found in such house or premises; and any such warrant may be according to the form given in the first schedule annexed to the before-mentioned Act to amend the law concerning games and wagers.

The Gaming Act, 1845 (8 & 9 Vict. c. 109), provides :

Sect. 3. In every case (except within the metropolitan police district), in which the justices of the peace in every shire, and mayors, sheriffs, bailiffs, and other head officers within every city, town, and borough, now have by law authority to enter into any house, room, or place where unlawful games shall be suspected to be holden, it shall be lawful for any justice of the peace, upon complaint made before him on oath that there is reason to suspect any house, room, or place to be kept or used as a common gaming house, to give authority, by special warrant under his hand, when in his discretion he shall think fit, to any constable to enter, with such assistance as may be found necessary, into such house, room, or place, in like manner as might have been done by such justices, mayors . . . and, if necessary, to use force for making such entry, whether by breaking open doors or otherwise, and to arrest, search, and bring before a justice of peace all such persons found therein as might have been arrested therein by such justice of peace had he been personally present; and all such persons shall be dealt with according to law, as if they had been arrested in such house, room, or place by the justice before whom they shall be so brought; any such warrant may be in the form given in the first schedule annexed to this Act.

The form of the warrant as given in the first schedule to 8 & 9 Vict. c. 109, is as follows (leaving out the formal parts) :

To the constable. . . . This is to require you, with such assistants as you may find necessary, to enter into the said house (room or place), and, if necessary to use force for making such entry, whether by breaking open doors or otherwise, and there diligently search for all instruments of unlawful gaming which may be therein and to arrest, search, and bring before me, or some other of the justices of Our Lady the Queen . . . as well the keepers of the same as also the persons there haunting, resorting, and playing, to be dealt with according to law; and for so doing this shall be your warrant.

The Unlawful Games Act, 1728 (2 Geo. 2, c. 28), provides :

Sect. 9. Where it shall be proved upon the oath of two or more credible witnesses before any justice or justices of the peace, as well as where such justice or justices shall find upon his or their own view, that any person or persons have or hath used or exercised any unlawful game, contrary to the said statute [that is, the 33 Hen. 8, c. 9.], the said justice or justices shall have full power and authority to commit all and every such offender and offenders to prison, without bail or mainprize, unless and until such

offender or offenders shall enter into one or more recognisance or recognisances, with sureties or without, at the discretion of the said justice or justices of the peace, that he or they respectively shall not from thenceforth play at or use such unlawful game.

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The 33 Hen. 8, c. 9 (a Bill for the maintaining artillery and the debarring of unlawful games), provides :

Sect. 14. It shall be lawful to all and every the justices of peace in every shire, mayors, sheriffs, bailiffs, and other head officers, within every city, town, and borough within this realm . . . to come, enter and resort into, all and every houses, places, and alleys where such games [that is, such unlawful games as are specified in sect. 11] shall be suspected to be holden, exercised, used, or occupied, contrary to the form of this statute; and as well the keepers of the same, as also the persons there haunting, resorting, and playing, to take, arrest and imprison, and them so taken and arrested to keep in prison until such time as the keepers, and maintainers of the said plays and games have found sureties to the King's use, to be bound by recognisance or otherwise, no longer to use, keep, or occupy any such house, play, game, alley, or place; and also that the persons there so found be in like case bound by themselves, or else with sureties, by the discretion of the justices, mayors, . . . no more to play, haunt, or exercise from thenceforth in, at, or to any of the said places, or at any of the said games.

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8 & 9 Vict.  
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*E. D. Purcell* for the appellant.—The appellant was arrested under sect. 11 of 16 & 17 Vict. c. 119, and sect. 2 of that Act makes this house a common gaming house within 8 & 9 Vict. c. 109. There was no evidence whatever against the appellant except that he was in this house, which was a common gaming house, and that he was arrested therein. No information was preferred against him, and in the absence of any information, he ought to have been discharged, as there is no penalty imposed in these Acts upon persons who are merely found in such houses. Sect. 5 of the Gaming Houses Act, 1854 (17 & 18 Vict. c. 38), renders the persons so found compellable to give evidence, but it leaves untouched the question what is to be done with such persons when arrested. That depends on the construction of sect. 14 of 33 Hen. 8, c. 9, which empowered justices to enter places where unlawful games were suspected to be carried on, and to arrest and imprison two classes of persons, namely, first, the keepers of such places, and, secondly, the persons “there haunting, resorting, and playing;” and the section goes on to say that the persons there “so found” shall be bound over by themselves or their sureties. The words “so found” must mean found “there haunting, resorting, and playing,” in the previous part of the section, so that we have the two things “haunting or resorting,” and “playing,” words which cannot refer to persons who are merely found upon the premises; and that is made very clear by the words describing the way in which the persons are to be bound “no more to play, haunt, or exercise from thenceforth” in or at any of the said places or games. Under the Act of Hen. 8 the justices could only act upon their own view, but sect. 9 of Geo. 2, c. 28, removed from the justices the necessity of visiting these places themselves, and enabled them to deal with persons who had been arrested in these houses and brought before them; and that section also deals with “unlawful games.” For persons

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Persons

found in

premises—

Binding on  
recognisances

—33 Hen. 8,

c. 9, s. 14;

8 &amp; 9 Vict.

c. 109, s. 3;

16 &amp; 17 Vict.

c. 119 . 11.

merely found on the premises no penalty is provided; but they must be arrested, brought before the magistrate, and then they must be discharged. The object clearly is to arrest everybody found in the house, and to bring them all before the magistrate, so as to be able to find amongst them the persons who are really liable. To bring the case within the Act of Hen. 8 there must be not only a "haunting or resorting" but also "playing," and here there was no evidence either of haunting or resorting, or of playing, even if betting is playing. Betting is not playing, or a game, or an unlawful game (*Jenks v. Turpin*, 50 L. T. Rep. at p. 818; 13 Q. B. Div. at p. 526); and no decision has ever gone so far as to say that betting is a game. In *Jenks v. Turpin* (*ubi sup.*) there was not only a gaming house, but there was evidence that the persons were playing an unlawful game. The magistrate was wrong in reading the statute so as to include not only persons there haunting, resorting, and playing, but also persons found therein, as the latter persons cannot be said to be haunting, resorting, and playing there. As to the form of the warrant, sect. 11 says that the warrant is to be in the form given in the first schedule to 8 & 9 Vict. c. 109, and the form of the warrant there is in the very words of the Act of Hen. 8, and the form of recognisance is in the same words. The words cannot apply to betting in a betting house, as betting is not an unlawful game.

*Danckwerts* for the respondent.—The decision of the magistrate was right. Sect. 2 of 16 & 17 Vict. c. 119 makes an unlawful betting house a gaming house within 8 & 9 Vict. c. 109, and sect. 2 of the latter Act says that "every such house shall be deemed a common gaming house, such as is contrary to law, and forbidden to be kept by the said Act of Hen. 8, and by all other Acts containing any provision against unlawful games or gaming houses." One of the effects of this legislation is to enlarge the scope of the Act of Hen. 8 so as to include betting houses and what is done in betting houses. Sect. 14 of the Act of Hen. 8 says that the persons "there so found" shall be bound over. The being found there is presumptive evidence that the person so found was there for the purpose of playing, and the magistrate is not compelled to bind such person over, but he has a discretion in the matter. There is therefore power given in the Act to bind over the persons there found. This view is strengthened by sect. 3 of 8 & 9 Vict. c. 109, which gives power to arrest and bring before a justice all such persons found in such place as might have been arrested by the justice personally, and a similar provision giving power to arrest all persons found therein is contained in sects. 11 and 12 of 16 & 17 Vict. c. 119. [LINDLEY, M.R.—The form of the warrant does not include the words "found therein."] It includes the word "resorting," and resorting is synonymous with being found therein.

*Purcell* in reply.



LINDLEY, M.R.—This is a case stated by one of the metropolitan police magistrates raising a question under the Betting Acts. It appears that there was a betting house on which a raid was made, and a great number of people were apprehended. Those of them who were really the keepers of the house were fined, and a considerable number of them were merely present. There was no evidence as to whether they were betting or anything of that kind, and the magistrate bound them over in a recognisance, to put it shortly, not to do it again. The question we have to decide is, whether the magistrate had any power to do that, and whether he was not bound to simply discharge them and let them go. That question turns upon the construction of a considerable number of sections of a series of Acts relating to gaming and betting. It involves the consideration of one of the sections of an Act of Hen. 8, perhaps one of Geo. 2, the 8 & 9 Vict. c. 109, and the 16 & 17 Vict. c. 119. I pass over the 17 & 18 Vict. c. 38, which relates to evidence, as nothing turns upon that Act. To my mind, the first thing is to examine these statutes and work them backwards, because we have to take as our starting point the 16 & 17 Vict. c. 119. That Act contains several sections which are important. I will not read the preamble, and I need not read for the purpose of discussing it, sect. 1, which has given rise to so much difficulty and difference of opinion as to the meaning of the word “place,” and so on. Sect. 2 is very important; it refers, of course, to sect. 1, and the first thing to be considered about it is, what is the conceivable object of that enactment that a betting house is to be treated as and is to be taken and deemed to be, a common gaming house, unless for some purposes, at all events, people going there are to be treated as people going to a common gaming house. Then we come to sect. 11, and we have to consider the object of the legislation in that section. First, the houses are gaming houses; secondly, there is power to arrest persons found therein, and then the warrant is to be in the form given in the previous Act, the 8 & 9 Vict. c. 109. I now pass from the 16 & 17 Vict. c. 119, to the 8 & 9 Vict. c. 109; and the important sections there are sects. 3, 6, and the schedule. [His Lordship having read sect. 3 and the schedule, proceeded:] The power, therefore, which is given by this section is to arrest persons who are found there—persons found therein—and then the warrant says that you are to arrest the persons there haunting, resorting, and playing. That language evidently has reference to some old Act of Parliament, and the old Act is the 33 Hen. 8, c. 9, sect. 14, where those words are used. [His Lordship having read sect. 14 of 33 Hen. 8, c. 9, proceeded:] This is the concatenation of sections with which we have to deal, and it appears to me, having regard particularly to the form of the warrant, that the intention of the Legislature is perfectly plain, and that when these people are arrested—and everybody agrees that it is perfectly lawful to arrest persons found there, whether gaming or not—the house

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is to be treated as a common gaming house; and the language of the warrant shows plainly that they are to be arrested and treated as if they were persons coming within the statute of Henry 8. That appears to me to be plain. I do not say that such persons are subject to penalties, but the arrest is for the purpose there mentioned, that is to say, for the purpose of binding the persons arrested over in recognisances. It appears to me that any other construction gives the go-by to the forcible language of the warrant. The warrant takes the form of the statute, and to my mind the construction of the statute contended for on behalf of the appellant which would require a number of persons to be arrested, brought before the magistrate and then discharged, would be ridiculous.

CHITTY, L.J.—I agree. The appellant and some other persons were found in a betting house. He and they were arrested and taken before the magistrate; and no complaint has been made or could be made that, under the warrant issued under the 11th section of 16 & 17 Vict. c. 119, this proceeding was not justified. There was no evidence against the appellant, except that he was found in the betting house. It is not found that he haunted or was in the habit of going to the place; and his case is that he ought to have been then and there discharged. Seeing that there was no information laid against him, as was the case with the keeper of the betting house who was engaged in the conduct and business of it, it is urged that in the circumstances there was no jurisdiction on the part of the magistrate to order him to enter into recognisances. I think there was such jurisdiction. The statute 16 & 17 Vict. c. 119 imposes penalties upon those keeping and conducting the business of a betting house, and it is quite true that, looking through the Act, we see that there is no penalty imposed on the persons resorting thereto. Sect. 1 enacts that a betting house is a common nuisance and contrary to law, and by sect. 2 a betting house is to be taken and deemed to be a common gaming house within the Act 8 & 9 Vict. c. 109. That throws us back on that statute, and from that statute we have to trace the legislation so far back as the time of Henry 8. Now these Acts are, for this purpose, *in pari materiâ*; they ought to be construed together and, although possibly the language may not precisely fit and may be open to some criticism of that kind, yet it seems to me that the intention of the Legislature is reasonably plain. Why is this house declared to be a gaming house within the 8 & 9 Vict. c. 109? Not for the purpose of the penalties against the keepers and those conducting the business of the house, because that is provided for by the express language of the statute itself. There must be some other purpose. That purpose is to bring the house within the purview, and to bring the whole case within the reach of the Act relating to gaming houses. Going back to the statute 8 & 9 Vict. c. 109—where the language is that the persons so found may be arrested—it is not necessary

for me to again refer to the section which has been already referred to, namely, sect. 3. Then referring to the warrant, the form of the warrant is also a matter of very considerable importance, because the warrant in its terms refers back to the statute of Henry 8, and the language of the warrant is language taken from that statute itself. The Legislature seems to have considered that a warrant in that form was applicable to the persons found in the gaming house within the language 8 & 9 Vict. c. 109. The statute of Henry 8 empowered the justices themselves to enter a gaming house, and to then and there make the arrest, and to bind over the persons so found. I think, putting the statutes together, and construing them reasonably, the right view as to that which is not now done by the magistrate in person, but is done as here, through the action of the police acting on a warrant, is that when the matter comes before the magistrate, he has the same jurisdiction sitting in his Court as the magistrate had if he had done it himself under the old statute. I need not refer more particularly to the statute 2 Geo. 2, c. 28, which may be passed over. What could be the object of justifying the arrest—which the statute does—and the taking before a magistrate of the persons resorting to this house, which we must take to be a gaming house, if the only result was that, unless some charge were preferred against them of being the keepers and of conducting the business of the gaming house, they should be then and there discharged? It seems to me to be a reasonable conclusion that, putting these Acts together, the result is that the statute of Henry 8 is brought into the statute of 16 & 17 Vict. c. 119 for the purpose of authorising the magistrate to make such an order as he has made in this case. He has made the order in the language of that statute, and I think that the 16 & 17 Vict. c. 119, on a just construction and on the series of the Acts when taken together, gives him the authority to order that the recognisances should be entered into by a person who was found in the place. Upon these grounds I think the magistrate's decision was correct, and I may add that the magistrate's opinion does not seem to be merely the opinion of himself, but is the opinion of many of the police magistrates in London whose practice has been to require persons to enter into recognisances under such circumstances.

*Appeal dismissed.*

Solicitors for the appellant, *Pattinson and Brewer.*

Solicitors for the respondent, *Wontner and Sons.*

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## QUEEN'S BENCH DIVISION.

*Tuesday, Nov. 2, 1897.*

(Before WRIGHT and KENNEDY, JJ.)

REG. v. MEAD; *Ex parte* THE LONDON COUNTY COUNCIL. (a)

*Practice—Hear and determine — Service of summons—Refusal to proceed—Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 1—London Building Act, 1894 (57 & 58 Vict. c. ccxiii.), s. 188 (1).*

*The procedure for the service of a summons under sect. 188 (1) of the London Building Act, 1894, is only available where, after ordinary inquiry, the person cannot be found or identified. When by such inquiry the person on whom the summons is to be served can be found or identified, then the summons must be served according to sect. 1 of the Summary Jurisdiction Act, 1848.*

THIS was an application to make absolute a rule *nisi* for a *mandamus* to compel Mr. Mead, one of the magistrates of the police-courts of the metropolis, to hear and determine a summons.

The facts were as follows :—

On the 23rd day of September, 1887, the London County Council made a complaint to a magistrate and applied for a summons under the London Building Act, 1894.

On the 1st day of October, 1897, this summons was returnable. It was addressed "To the Owner" merely, and when the owner was called on to appear in the ordinary way there was no response.

The complainants thereupon proposed to proceed in the absence of the defendant, and upon the magistrate calling for proof of service of the summons, a constable gave evidence that he had affixed a copy on the premises, which were unoccupied.

They stated that the owner was unknown, but no evidence was given that any steps had been taken to discover him. There was no evidence even that the valuation list or rate had been examined, or the rate collector interrogated, or other obvious means taken, with a view to discover who the last owner or occupier was, although such inquiries would in all probability have led to the identity of the owner being established.

The complainants further contended that the service was sufficient under sect. 188 (1) of the London Building Act, 1894,

(a) Reported by W. DE B. HERBERT, Esq., Barrister-at-Law.

but the magistrate was of the opinion that the service of any summons, if anonymously addressed, *i.e.*, "To the Owner," was a "notice," the service of which is provided for by the Summary Jurisdiction Acts, and must therefore be served under 11 & 12 Vict. c. 43, s. 1, personally, or at the last known place of abode. He also considered that, even if a summons addressed "To the Owner," in a case where the owner could not be found, was not provided for by the Summary Jurisdiction Acts, there should be evidence that reasonable diligence had been exercised by the complainants to discover the owner of the property in question. For these reasons he refused to hear the summons.

By the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 1:

Every such summons shall be served by a constable or other peace officer, or other person to whom the same shall be delivered, upon the person to whom it is so directed, by delivering the same to the party personally, or by leaving the same with some person for him at his last or more usual place of abode; and the constable, peace officer, or person who shall serve the same in manner aforesaid, shall attend at the time and place in the said summons mentioned, to depose, if necessary, to the service of the said summons.

By the London Building Act, 1894 (57 & 58 Vict. c. ccxiii.), s. 188:

(1.) Any notice, order, or other document required or authorised to be served under this Act, the service of which is not provided for by the Summary Jurisdiction Acts, the Lands Clauses Acts, or the Companies Clauses Consolidation Act, 1845, may be served by delivering a copy thereof at, or by sending a copy thereof by post in a registered letter to the usual or last known residence in the United Kingdom of the person to whom it is addressed, or by delivering the same to some person on the premises to which it relates, or if no person be found on the premises, then by fixing a copy thereof on some conspicuous part of the building to which it relates, and in the case of a railway company, by delivering a copy thereof to the secretary at the principal offices of the said company.

*Sutton* showed cause against the rule.—The two points raised by the other side are (1) that the service was sufficient, and (2) that this case is covered by *Reg. v. Mead* (70 L. T. Rep. 766; (1894) 2 Q. B. 125). As to (1), under the sections of the Building Act, 1894, the service of the summons must be under sect. 1 of the Summary Jurisdiction Act, 1848. As to (2), that decision was under a different Act; if it had been under the Building Act of 1894, the decision of the Court in that case would have been the other way. It was under the Public Health Act, 1891, s. 120 (1). In the present Act there is no section like sect. 120 (1), and no form of summons as in that Act.

*Avory* for the London County Council.

WRIGHT, J.—I think that this application for a rule against the magistrate fails on two grounds. The first is the narrow ground that, supposing the procedure under sect. 188 applicable, the evidence was not sufficient under that section because it does not appear that there was evidence given to the effect that no person was to be found on the premises. But the wider and more important ground is on the general construction of sect. 188. It seems to me that the true construction is, that where the

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*Service—*  
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*Building Act,*  
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*Vict. c. ccviii.,*  
*s. 188 (1).*

person can be identified by reason of an inquiry, not a prolonged or expensive inquiry, but by ordinary inquiry, then it is right that the procedure under Jervis's Act should be followed, because that is the procedure most likely to bring the matter to his attention. But if, after reasonable inquiry such as every constable knows how to make in the course of a few minutes, it cannot be discovered who the owner is, then it seems to me that sect. 188 is applicable. In the present case I think that the magistrate was right in saying that there had not been quite enough inquiry on the part of the officer of the London County Council. We have nothing to show that he would not have been satisfied by a very moderate amount of inquiry indeed, but there is no evidence before us that there was any.

KENNEDY, J.—I agree.

*Rule discharged.*

Solicitor for the magistrate, *The Solicitor to the Treasury.*  
Solicitor to the London County Council, *W. A. Blaxland.*

## COURT FOR CROWN CASES RESERVED.

*Saturday, Dec. 11, 1897.*

(Before Lord RUSSELL, C.J., HAWKINS, MATHEW, GRANTHAM, and DARLING, JJ.)

REG. v. COX. (a)

*Practice — Indictment — Evidence — Certificate of birth — Proof of age — Cruelty to children — Custody or charge of child — 57 & 58 Vict. c. 41.*

*An indictment on which several defendants are charged may contain counts charging offences against individual prisoners as well as counts charging all the prisoners jointly. If it is likely that injustice may be caused to any prisoner by trying all the prisoners together, the Court may order the prisoners to be tried separately.*

*Whether a person has the custody, charge, or care of a child is a question of fact; the age of a person may be proved by any lawful evidence; the production of a certificate of registration of birth is not, therefore, essential in cases where the age of a person is to be proved.*

(a) Reported by A. A. BETHUNE, Esq., Barrister-at-Law.

*Semble, the neglect made penal by the Prevention of Cruelty to Children Act, 1894 (57 & 58 Vict. c. 41), s. 1, is wilful neglect.*

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**T**HIS was a case stated by the chairman of the Worcester-shire Quarter Sessions, and the following are the material facts :

Frederic Cox and Isabella Cox were indicted for offences under the Prevention of Cruelty to Children Act, 1894 (57 & 58 Vict. c. 41).

The indictment contained nine counts.

The second charged that both the defendants, "being persons over the age of sixteen years respectively, and having the custody and charge of a certain child, to wit, Thomas Enock Cox, a boy under the age of sixteen years, did unlawfully and wilfully neglect such child in a manner likely to cause such child unnecessary suffering.

The third count charged the defendants with wilfully neglecting the child in a manner likely to cause injury to his health ; while the sixth, seventh, eighth, and ninth counts also charged the defendants jointly with these offences in respect of other children

The fourth and fifth counts charged the offences against Isabella Cox with respect to another child.

The defendants were husband and wife living together, but one of the children was the man's illegitimate child and another the illegitimate child of the woman. The other children were issue of the marriage.

The man was a labourer, and was absent from home all day.

Evidence was given at the trial by persons who had seen the children that they were in a filthy condition and infested with vermin, and that the room in which they slept and their bedding were filthy.

One of the children, an infant in arms, was produced in Court. With regard to the others, witnesses stated that they had seen the children and believed them to be under sixteen years of age, and the mistress of a public elementary school stated that the eldest children attended the school, and that she believed them to be within the statutory age limit for such schools. This age is "not less than five years nor more than thirteen years," 33 & 34 Vict. c. 75, s. 74 (1).

The jury acquitted Frederic Cox, but convicted Isabella Cox.

The questions for the Court were (*inter alia*) : 1. Was the indictment bad for including separate charges against each prisoner as well as joint charges ? 2. Was the female prisoner a person who had the custody, charge, or care of the children within the statute (57 & 58 Vict. c. 41) ? 4. Was there any legal evidence of the age (a) of the children, (b) of the parents to go to the jury ?

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Indictment—  
Evidence—  
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Practice—  
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Certificate of  
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Other questions were stated, but were not argued before the Court.

*Stamford Hutton* for the prisoner.—There was a verdict of "guilty" against Isabella Cox on all the counts. Isabella Cox was not responsible for the man's illegitimate child, yet the defendants were jointly indicted in counts 1 and 2 for an offence against that child. For this reason the indictment is bad: (*R. v. Phillips*, 2 Str. 921). The husband was the person who had the custody, charge, and care of the children: (*Reg. v. White*, 24 L. T. Rep. 637; L. Rep. 1 C. C. 311; 12 Cox C. C. 83). The age of the parents and of the children was not proved. In every case the best evidence only can be received, and the best evidence of age is the production of a certificate of the registration of birth, coupled with evidence of identity: (*Reg. v. Wedge*, 5 C. & P. 298).

*Clarke Hall*, for the Crown, was not called on.

LORD RUSSELL, C.J.—This case comes before us on a case stated by the chairman of the Worcester Quarter Sessions, and we have only to deal with the points on which we are asked to express our opinion. But I think it right to observe that it was at least open to question whether the direction given by the learned chairman to the jury which is set out in paragraph 11 of the case is the proper direction. That direction was as follows: "I told the jury that, if they were of opinion on the evidence that the prisoners knew that the children were infested by vermin, that the presence of such vermin was the result of neglect or absence of reasonable care in looking after the children, and that the presence of such vermin caused the children unnecessary suffering that reasonable care would have prevented, they could convict the prisoners." The proper direction is to follow the words of the statute, which are that, if any person "wilfully assaults, ill-treats, neglects, abandons, or exposes" a child, he shall be guilty of a misdemeanour. The assault must be wilful, and it follows that the ill-treatment or neglect must be wilful. The first point on which we are asked to express our opinion is, whether the indictment is bad because it contains counts charging the defendants jointly as well as counts in which the defendants are charged singly. It is a well-established principle of law that there may be in one indictment against several defendants counts charging individual prisoners separately and counts charging all the prisoners jointly. This is clear from the case of *R. v. Kingston* (8 East, 41). It may in some cases work injustice, as where the evidence of one prisoner is necessary for the defence of another; and there may be cases in which there is some danger of the jury convicting a prisoner on evidence which is only admitted against another. But in such cases the Court has power to order that the prisoners be tried separately. The next question submitted to us is, was the female prisoner a person who had the custody, charge, or care of the children? There was ample evidence on

which the jury might find that she had the custody and charge of the children, and whether she had the custody or charge is a question of fact, she was not indicted as a person having the care of the children. We are then asked whether there was any legal evidence of the age of the children, and of the parents. A certificate of birth coupled with evidence of identity is legal evidence of the age of a person mentioned in it; but that is not the only way in which the age of a person may be proved. It may be proved by any lawful evidence, and in this case there was the evidence of persons who had seen the children and evidence that the eldest attended a public elementary school. As to the age of the parents, to state the question is to answer it. The parents were in the dock, and the jury were able to judge from their appearance as to whether they respectively exceeded sixteen years in age.

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HAWKINS, MATHEW, GRANTHAM, and DARLING, JJ. concurred.

*Conviction affirmed.*

Solicitors for the Crown, *W. Moreton Philips*, agent for *Coleman and Whiteley*, Redditch.

Solicitors for the prisoner, *Clarke and Blundell*.

## COURT FOR CROWN CASES RESERVED.

*Saturday, Dec. 11, 1897.*

(Before Lord RUSSELL, C.J., HAWKINS, MATHEW, GRANTHAM, and DARLING, JJ.)

REG. v. WEST. (a)

*Indictment—Commencement of prosecution—Rape—Defilement of girl under sixteen—Greater offence including the lesser—48 & 49 Vict. c. 69, ss. 5, 9.*

*A prosecution for rape is in fact a prosecution for any of the offences of which a person tried on an indictment for rape may be found guilty.*

*Although then it is provided by the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 5, that a prosecution for an offence under sect. 5 (1) shall not be commenced more than three months*

(a) Reported by A. A. BETHUNE, Esq., Barrister-at-Law.

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*after the commission of the offence, a person originally charged with rape within the period limited may be subsequently convicted of the offence under sect. 5 (1).*

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ment of  
prosecution—  
Rape—  
Defilement of  
girl under  
sixteen—  
Criminal Law  
Amendment  
Act, 1885—  
48 & 49 Vict.  
c. 69, ss. 5, 9.

CASE stated by Sir Walter Phillimore, Bart., Commissioner of Assize at Durham.

The material facts stated were as follows :

On the 25th day of November the prisoner was tried on an indictment charging an offence under sect. 5 (1) of the Criminal Law Amendment Act 1885 (48 & 49 Vict. c. 69), alleged to have been committed on the 19th day of July.

The prisoner was charged before the magistrate with rape, and was committed for trial on that charge, but the bill submitted to the grand jury and the indictment found by them charged an offence under sect. 5 (1) of the Criminal Law Amendment Act, 1885.

At the close of the case for the prosecution, counsel for the prisoner submitted that, inasmuch as the prisoner had been originally charged with rape, and not with the offence charged in the indictment, no prosecution had been commenced before the bill had been preferred to the grand jury, and that, therefore, by reason of the provision contained in that section, that no prosecution shall be commenced for an offence under sub-sect. 1 of the section more than three months after the commission of the offence, the prisoner was entitled to be discharged.

The learned Commissioner overruled the objection, and the jury found the prisoner guilty of the offence charged in the indictment.

*Meynell* for the Crown.—Sect. 9 of the Criminal Law Amendment Act, 1885, provides that a person charged with rape may be convicted of an offence under sect. 5 of the Act. The prisoner being charged with rape was charged with an offence which included the offence under sect. 5. The prosecution was therefore commenced when the prisoner was charged before the magistrates. He referred to *Reg. v. Wallace* (1 East P. C. 186, note).

The prisoner was not represented.

Lord RUSSELL, C.J.—The fact being that the prisoner had committed an offence against the person of a girl under the age of sixteen, upon the hearing before the magistrates they came to the conclusion that there was evidence justifying them in committing him for trial on a charge of rape. He was so committed, but apparently on consideration the authorities came to the conclusion that the evidence would not support a charge of rape, and accordingly the indictment preferred against the prisoner charged an offence under sect. 5 (1) of the Criminal Law Amendment Act, 1885. At the moment when this indictment went before the grand jury, more than three months had elapsed since the offence was committed. Sect. 9 of the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), provides that, if upon the trial

of any indictment for rape the jury are satisfied that the defendant is guilty of an offence under sect. 5 of the Act, but is not guilty of the felony charged in the indictment, the jury may acquit the defendant of the felony, and find him guilty of the offence under sect. 5. If, then, instead of taking this course of indicting the prisoner for an offence under sect. 5 of the Act, the prosecution had indicted him for rape, he could have properly been convicted of the lesser offence. But this indictment was in form an indictment for an offence under sub-sect. 1 of sect. 5 of the Criminal Law Amendment Act, 1885, and the proviso to that section is that no prosecution for any of the offences therein mentioned shall be commenced more than three months after the commission of the offence. The question is, therefore, was the prosecution in this case commenced within three months of the commission of the offence? A prosecution for rape is a prosecution, in fact, for any of the offences of which the person charged on an indictment for rape may be found guilty. *Omne majus in se minus continet*. In this case, therefore, the prosecution was commenced when the man was charged before the magistrates. The magistrates were justified in thinking that, even if the evidence might prove to be insufficient to support a conviction for rape, the prisoner would suffer no injury if an indictment on which he might be convicted of a lesser offence were preferred against him.

HAWKINS, MATHEW, GRANTHAM, and DARLING, JJ. concurred.

*Conviction affirmed.*

Solicitor, *Solicitor to the Treasury*.

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WARD  
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1897.  
—  
*Practice—  
Commence-  
ment of  
prosecution—  
Rape—  
Defilement of  
girl under  
sixteen—  
Criminal Law  
Amendment  
Act, 1885—  
48 & 49 Vict.  
c. 69, ss. 5, 9.*

## CROWN CASES RESERVED.

*Aug. 7 and Nov. 27, 1897.*

(Before Lord RUSSELL, C.J., POLLOCK, B., HAWKINS, LAWRENCE,  
and COLLINS, JJ.)

REG. v. LYNCH AND JONES. (a)

*Seaman—Intimidation—Seafaring man out of employment—  
Construction of statute—Conspiracy and Protection of Pro-  
perty Act, 1875 (38 & 39 Vict. c. 86), s. 7—Merchant  
Shipping Act, 1854 (17 & 18 Vict. c. 104)—Merchant  
Shipping Act, 1894 (57 & 58 Vict. c. 60).*

(a) Reported by A. A. BETHUNE, Esq., Barrister-at-Law.

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Intimidation  
—Seaman—  
Seafaring  
man out of  
employment—  
Protection of  
Property Act,  
1875—  
Merchant  
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Acts, 1854  
and 1894—  
17 & 18 Vict.  
c. 104;  
38 & 39 Vict.  
c. 86, s. 7;  
57 & 58 Vict.  
c. 60.

*Seafaring men are not as a class excepted from the provisions of the Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86). In construing sect. 16 of that Act the word "seaman" therein is to be taken to mean persons employed under and subject to the liabilities imposed by the Merchant Shipping Acts.*

THIS was a case stated by Ridley, J.

The facts set out in the case, and the question reserved, with the arguments of counsel, are fully stated in the judgment of the Court.

*J. D. Crawford*, for the prisoners, referred to *Kennedy v. Cowie* (64 L. T. Rep. 598; (1891) 1 Q. B. 771; 17 Cox C. C. 320); and to the definition of "seaman" in Johnson's Dictionary, Webster's Dictionary, the Century Dictionary.

*B. Francis Williams*, Q.C. and *Arthur Lewis* for the Crown.  
*Cur. adv. vult.*

The judgment of the Court was delivered by.

LORD RUSSELL, C.J.—The prisoners were indicted and convicted for an offence under the provisions of the Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), s. 7, for having, with a view to compel one William Eten to abstain from doing that which he had a legal right to do, that is to say, from performing a contract which he had entered into with the owner of the steamship *Lesraula*, to serve as a seaman on board the said ship, intimidated the said William Eten, and watched and beset the place where he then was, and followed him with others in a disorderly manner. The facts, which were proved and not disputed by the prisoner's counsel, were as follows: William Eten, together with Henry Chandler and James Owen, signed articles on board the steamship *Lesraula*, then lying under a coaling tip in Penarth Dock. Articles were signed on board the vessel instead of at the shipping office as usual, because the owners of the *Lesraula* were paying a lower rate of wages than that allowed by the Seamen and Firemen's Union, and in consequence of apprehended violence from the members of the union. On coming ashore the prisoners, together with a number of persons who had been waiting on the dock side, surrounded them, and it was proved that they were intimidated and assaulted by the prisoners who followed them in company with the others for a distance of some 300 yards. There was evidence that the prisoners followed the sea as a calling, each of them having been engaged as a fireman on board steamships, but on the day in question they were not engaged or employed as firemen or seamen on board ship. It was not shown when either of them had been last so employed or engaged, but they followed the sea as an occupation. At the conclusion of the case for the prosecution the counsel for the prisoner submitted that there was no evidence to go to the jury in support of

the indictment on the ground that, by sect. 16 of the Conspiracy and Protection of Property Act, it was provided that "this Act shall not apply to seamen or apprentices to the sea service," and that, therefore, the prisoners could not be convicted. For the prosecution it was contended that the term "seamen" in the Conspiracy and Protection of Property Act applied only to seamen actually engaged or employed on board ship within the definition in the Merchant Shipping Acts, 1854 and 1894, namely, 17 & 18 Vict. c. 104, s. 2, and 57 & 58 Vict. c. 60, s. 742. The learned judge (Ridley, J.) directed the jury that for the purposes of this case the defendants were not within the exception contained in sect. 16 of the Act of 1875. If there were no reason to the contrary, "seamen" might well be construed in its largest sense as meaning a seafaring man or person whose ordinary occupation is that of a seaman, just as a person whose usual vocation is that of a carpenter is so called although he may be out of employ at the particular time. In construing an Act of Parliament, however, it is necessary to inquire into the intention of the Legislature, giving just effect to the language employed, having regard to the object in view, and taking into account other legislation bearing on the question. The question at once arises, why are seamen excepted from the provisions of the Act and not carpenters or any other workmen or artificers? If "seaman" means "seafaring man," it would be difficult to suggest any reason for so large an exception, whereas if it is taken in the limited sense of the definition in the Merchant Shipping Acts, a reason for such exception might possibly be found in the special legislation of those Acts applicable to the limited class of seamen as therein defined. If, for instance, the Merchant Shipping Act, 1854, contained a series of clauses similar in principle to those which are found in the Conspiracy and Protection of Property Act, 1875, but by their language specially adapted to the case of sailors in actual employment, the distinction would be obvious and the argument in favour of the prosecution would be irresistible. But, although the provisions of the Merchant Shipping Act, 1854, as to sailors in actual employment are not similar to those which are contained in the Conspiracy Act of 1875, the Merchant Shipping Act, 1854, does contain provisions which have an important bearing upon the determination of the present case. By the interpretation clause of the Merchant Shipping Act (s. 2) it is enacted that "seaman shall include every person (except masters, pilots, and apprentices duly indentured and registered) employed or engaged in any capacity on board any ship." By sect. 243, which deals with offences of seamen, and their punishment (sub-sect. 4), it is provided that: "For wilful disobedience to any lawful command a seaman shall be liable to imprisonment for any period not exceeding four weeks, with or without hard labour, and also, at the discretion of the Court, to forfeit out of his wages a sum

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*1875—*  
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*Property Act,*  
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not exceeding two days' pay." By sect. 257 it is provided that: "Every person who by any means whatever persuades or attempts to persuade any seaman or apprentice to neglect or refuse to join or to proceed to sea in or to desert from his ship, or otherwise so absent himself from his duty, shall for each such offence in respect of each such seaman or apprentice incur a penalty not exceeding ten pounds." These provisions create a wide distinction between a seaman actually employed or engaged under the Merchant Shipping Act, and a mere seafaring man not so actually employed or engaged, and the status of the former is thereby rendered very different from that of the latter. With reference to the offence dealt with by the Conspiracy Act, 1875, the captain of a vessel possesses ample power to deal with a seaman under his command. He may require him, as a lawful command, under sect. 243, sub-sect. 4, to abstain from intimidation; or if a seaman persuades or attempts to persuade another seaman to neglect or refuse to join or to proceed to sea in or to absent himself from his duty, he may summon him for the penalty. Under these circumstances the Legislature may well have considered the mischief dealt with by the Conspiracy Act, 1875, already sufficiently provided against, and have declined to add a cumulative remedy. It was suggested in argument that a difficulty might arise in determining whether a seaman was "employed or engaged," and also whether, as the Act adds the words "on board any ship," a seaman would be liable if he committed the alleged illegal act ashore. These objections have no real foundation, as the employment or engagement must be decided as a fact in each case, and a seaman may well be held to be employed or engaged on board a ship, although at the particular point of time he may have been sent ashore on duties connected with the ship, such as obtaining stores or provisions, or taking a letter to the ship's agent. What is found in the case as to the prisoners is, that "there was evidence that they followed the sea as a calling, each of them having been engaged or employed as fireman or seaman on board ship. It was not shown when either of them had been last so employed or engaged, but they followed the sea as an occupation." It is consistent with this that they had been out of employment for months, and they appear to have had no immediate or certain prospect of a future engagement. It would be strange if the Legislature intended to exclude such persons from the legislation of 1875 as well as from that of the Merchant Shipping Acts. On the whole, therefore, it appears that at the date of the passing of the Act of 1875 the Legislature had already in an earlier statute defined what it meant by "seamen," that the explanation of their exclusion from the later Act must be sought in the fact that they were already the subject of special enactments giving another remedy for some of the matters included in the later statute, and that no ground of reason or common sense can be found for excluding from the operation of the Act in question the whole

class of seafaring men not actually engaged in sea service. Under the circumstances we think the view taken by the learned judge at the trial was correct, and the conviction must be affirmed.

*Conviction affirmed.*

Solicitors for the Crown, *G. David and Evans.*

Solicitors for the prisoners, *Pattinson and Brewer.*

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*and 1894—*  
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c. 104;  
38 & 39 Vict.  
c. 86, s. 7;  
57 & 58 Vict.  
c. 60.

## QUEEN'S BENCH DIVISION.

*Thursday, Dec. 9, 1897.*

(Before HAWKINS and CHANNELL, JJ.)

KNOWLES AND SONS LIMITED (apps.) v. SINCLAIR (resp.). (a)

*Weights and measures—Coal—Sale of—Ticket—Correct weight*  
*—When to be ascertained—Weights and Measures Act 1889*  
*(52 & 53 Vict. c. 21), s. 22.*

*Upon a sale of coal, exceeding two hundredweight, in a vehicle in bulk, the "correct weight" of the vehicle and of the coal, which, by sect. 22, sub-sect. 2, of the Weights and Measures Act, 1889, is to be inserted in the ticket required by the Act to be given by the seller to the purchaser, is the correct weight as previously ascertained under sect. 22, sub-sect. 1, by a weighing instrument being at or near the place from which the coal is brought, and not the correct weight at the time the coal is delivered to the purchaser.*

CASE stated by the justices of the peace for the county of Lancaster.

The appellants are colliery proprietors carrying on business near Bolton, Lancashire, and the respondent is an inspector of weights and measures.

An information was laid by the respondent against the appellants, charging them with having committed an offence against the provisions of sect. 22, sub-sect. 2, of the Weights and Measures Act, 1889, in not having inserted or caused to be inserted in the ticket required by the Act to be given by them a statement of the correct weight of the vehicle or of the vehicle

(a) Reported by W. W. ORR, Esq., Barrister-at-Law.

**KNOWLES AND SONS LIMITED** and of the animal drawing it, as required by the provisions of that sub-section.

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The summons was originally taken out under sub-sect. 1 of sect. 22, for not having caused the tare weight of the vehicle to be marked therewith; but, at the hearing of the 14th day of January, 1897, it was amended to a summons under sub-sect. 2, and may be treated as taken out under sub-sect. 2.

At the hearing before the justices, a police-constable, an assistant to the inspector, proved that on the 28th Dec., 1896, he met the appellants' cart at Radcliffe loaded with coal, and that he followed it to a house, and there saw the coal delivered, and a ticket at the same time delivered to the purchaser of the coal by the appellants' carter, which ticket showed the appellants' cart and horse to weigh 29cwt.; that he then took the horse and cart to the weighing-machine at the railway station and there caused them to be weighed when the weight was shown to be 28cwt. 3qrs., or a difference of 28lb. (in favour of the purchaser) between the weight shown upon the ticket and that registered by the machine at the station; and that the cart was not weighed apart from the horse.

It was contended for the appellants that they had not committed any offence under sect. 22, sub-sect. 2, as the difference between the weight shown on the ticket and that registered by the machine was to be accounted for by the weight of the horse varying.

The justices convicted the appellants of an offence under sect. 22, sub-sect. 2, imposing a fine of 20s., and ordering them to pay 10s. 6d. costs.

The question now was whether the justices were right in so convicting the appellants.

The Weights and Measures Act, 1889 (52 & 53 Vict. c. 21), provides:

Sect. 21.—(1.) Where any quantity of coal exceeding two hundredweight is delivered by means of any vehicle to a purchaser, the seller of the coal shall therewith deliver, or cause to be delivered, or to be sent by post or otherwise to the purchaser or to his servant, before any part of the coal is unloaded, a ticket or note according to the form in the third schedule to this Act, or according to a form to the like effect. (2.) If default is made in complying with the requirements of this section with respect to the delivery or sending of a ticket or note, or if the quantity of coal delivered is less than the quantity expressed in the ticket or note, the seller of the coal shall be liable to a fine not exceeding five pounds.

Sect. 22.—(1.) Where any quantity of coal exceeding two hundredweight is conveyed for delivery on sale in a vehicle in bulk, the seller of the coal shall, unless the vehicle is provided by the purchaser, cause the weight of the vehicle, as well as of the coal contained therein, to be previously ascertained by a weighing instrument stamped by the inspector of weights and measures, and being on or near to the place from which the coal is brought, and shall from time to time cause the tare weight of the vehicle to be marked thereon in such manner as the local authority approve. (2.) In any such case the seller of the coal shall insert or cause to be inserted in the ticket required by this Act to be given by him, a statement of the correct weight of the vehicle, or of the vehicle and the animal drawing it where both are weighed together with the load, as well as of the correct weight of the coal contained in the vehicle. (3.) If any person fails to comply with the requirements of this section he shall be liable to a fine not exceeding five pounds.

Sect. 27.—(1.) Any seller or purchaser of coal . . . may require that any

coal or any vehicle used for the carriage of coal in bulk, be weighed or reweighed by any weighing instrument stamped by an inspector of weights and measures; provided that (b) where any such coal or vehicle has at the instance of the purchaser been weighed or reweighed in pursuance of this section, and found to be of the weight stated in that behalf by the seller of the coal or the person in charge of the vehicle, the purchaser shall be liable to the payment of all reasonable costs actually incurred of and incidental to the weighing or reweighing.

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The form of the ticket or note given in the third schedule is as follows :

Mr. A. B. (the name of the buyer).—Take notice that you are to receive herewith —tons —cwt. —lbs. of coal.

	Tons.	cwt.	lbs.
Weight of coal and vehicle .....	—	—	—
Tare weight of vehicle .....	—	—	—
Net weight of coal herewith delivered to purchaser.....	—	—	—

C. D. (the name of the seller).

Where coal is delivered by means of a vehicle the seller must deliver or send by post or otherwise to the purchaser or his servant, before any part of the coal is unloaded, a ticket or note in this form. Any seller of coal who delivers a less quantity than is stated in this ticket or note is liable to a fine.

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*T. W. Chitty* for the appellants.—In point of fact we gave 28lb. of coal too much, and it cannot be said that it was intended by the Act to render a person liable to penalties for giving too much. That cannot be the meaning of sub-sect. 2 of sect. 22. By sect. 21, sub-sect. 1, the seller of the coal is to deliver, or send by post, to the purchaser, a ticket in the form in the schedule. The fact that this ticket may be sent by post shows that it is to be made out and filled up before the delivery of the coal to the purchaser. Then, by sect. 22, sub-sect. 2, what has to be inserted in this ticket is “a statement of the correct weight of the vehicle, or of the vehicle and the animal drawing it where both are weighed together with the load, as well as the correct weight of the coal.” The “correct weight” within the meaning of this sub-section is a weight which, as between the seller and the purchaser, is a correct weight, and it cannot be said that a weight which is in favour of the purchaser is not a correct weight. The whole provision of the Act is in favour of the purchaser, and therefore there is no offence committed unless the purchaser is prejudiced, and he cannot be prejudiced if he gets more than the proper amount of coal. Then by sect. 22, sub-sect. 1, the seller is to cause “the weight of the vehicle, as well as of the coal contained therein, to be previously weighed by a weighing instrument, being on or near to the place from which the coal is brought.” That contemplates a previous weighing of the coal and the vehicle before the cart is sent out with the coal, and such weighing is evidently intended to be at or near the place where the coal is loaded. The result of such previous weighing under sect. 22, sub-sect. 1, is the “correct weight” under sub-sect. 2, which has to be inserted in the ticket. Then by sect. 27, sub-sect. 1, the purchaser may, if he chooses, have the coal or vehicle reweighed, and if the result of this reweighing shows that the weights are as stated, then the purchaser has to bear the costs of such

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reweighing, showing that such reweighing at the time the coal is delivered has nothing to do with the previous weighing before the coal is sent out, the result of such previous weighing being the "correct weight" to be inserted in the ticket. There was no evidence here that the weights as stated in the ticket were incorrect at the time the cart was sent out, and therefore there was no evidence to support this conviction, which ought to be quashed.

*Loehnis* for the respondent.—At the time when the ticket is delivered to the purchaser, the correct weight of the horse and vehicle is to be given. "Correct weight" in the sub-section means a weight which is a correct weight at the time when the coal is to be delivered to the purchaser, and not a weight which may have been correct at some previous time. The weight here was incorrect, and therefore the conviction was right.

HAWKINS, J.—I think that this conviction ought to be quashed, and for the following reasons. By sect. 21, sub-sect. 1, the seller of the coal is to deliver, or cause to be delivered, or send by post or otherwise to the purchaser, a ticket or note according to the form in the third schedule, containing the weight of the coal and vehicle and the tare weight of the vehicle, and the weighing evidently contemplated by that section is the weighing mentioned in sect. 22. [His Lordship having read sect. 21, sub-sect. 1, the form of the ticket in the third schedule, and sect. 22, sub-sect. 1, proceeded:] The form of the ticket required to be sent to the purchaser is that given in the third schedule, and it is quite clear from that form in the schedule that it was in contemplation that the weight of the coal and vehicle should be inserted in the ticket, and that that ticket should then either be delivered with the coal or be sent by post to the purchaser. Reading sects. 21 and 22 together, it is clear to my mind that the ticket is to be delivered containing the particulars which are required by the form in the schedule to be prepared and to be sent out by post, or at the option of the seller to be given to the carman for delivery to the purchaser before any part of the coal is unloaded. But the weighing is to be done, and the amount of the weight and the particulars of it are to be ascertained by a weighing machine stamped by the inspector of weights and measures and being near to the place from which the coal is brought. That is the obligation cast upon the seller of the coal, and reading those two sections, I entertain no doubt that the object of the Legislature was that the weighing of the coal should take place practically at the place from which the coal came, and that the ticket containing these two weights should be sent to the purchaser in order that he might have them before him at the time the coal was delivered. I am satisfied that it was never contemplated that there should be a ticket of that kind sent in the morning, and another ticket delivered in the afternoon. I think the ticket that is to be delivered to the purchaser is that mentioned in sect. 21, containing the weight



which is the result of the weighing referred to in sect. 22, sub-sect. 1. The complaint is that a false weight was put upon the ticket, though according to the constable's evidence, the result of the subsequent weighing showed that the purchaser was benefited by 28lb. of coal, and the appellants were convicted upon that complaint. I think that all the preliminaries which are required by the statute to be gone through before the coal was delivered, were regularly gone through. Certainly a ticket was sent; certainly a weight was put upon it; and there is no suggestion that the coal was not actually weighed. That being so, it would be a strong thing for us to say that the weights as recorded upon the ticket are false when there is not a particle of evidence to suggest that. I am of opinion, therefore, that this conviction was wrong for the simple reason that there was no evidence at all to support it, and that upon that ground it ought to be quashed.

CHANNELL, J.—I am of the same opinion. I think it is clear for the reasons stated that the magistrates were not right in convicting the appellants upon this charge. The enactment is that the seller shall weigh both the coal and the vehicle, or the vehicle and the horse if both are weighed together, and that he shall do so beforehand; that he shall send the particulars of the previous weighing, at which the purchaser is not present, to the purchaser; then the purchaser gets his coal, and then he exercises his own judgment whether it is worth while enforcing the right which he has under sect. 27 of having it reweighed. If the purchaser enforces that right, and has the coal reweighed, then, if the reweighing goes against him, he has to pay the costs, as required by sect. 27 (b). If there were any doubt about the matter, and if the "correct weight" in sect. 22, sub-sect. 2, did not mean the correct weight as ascertained at that previous weighing, then I think it would follow, as contended for on behalf of the appellants, that it would not be an offence, if the incorrectness were in favour of the purchaser, and against the seller, as in the present case. I think the "correct weight" means the correct weight as ascertained at the place where the weighing has to take place before the delivery of the coal is made. Therefore I think the conviction is bad, and, instead of having further expense about this 28lb. of coal over delivered, the simplest course is to quash the conviction.

*Judgment for the appellants. Conviction quashed.*

Solicitors for the appellants, *Sharpe, Parker, Pritchards, and Barham*, for *Richardson and Marsh*, Bolton.

Solicitors for the respondent, *Rowcliffes, Rawle, and Co.*, for *J. Hall*, Bury.

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## QUEEN'S BENCH DIVISION.

*Friday, Jan. 14, 1897.*

(Before DAY and LAWRENCE, JJ.)

McLEAN (app.) v. MONK (resp.). (a)

*Animals—Holding sale of swine—Taking round swine in cart and offering for sale—Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57), s. 22, sub-s. xix.—Markets and Fairs (Swine Fever) Order, 1896.*

*By an order of the Board of Agriculture, dated the 11th day of December, 1896, made in pursuance of sect. 22, sub-sect. xix., of the Diseases of Animals Act, 1894, "no market, fair, sale, or exhibition of swine shall be held in a district to which this order applies except as expressly authorised by this order," and a "sale of swine (not being in a swine fever infected area) may be held with the licence of the local authority."*

*The respondent Monk was in charge of a horse and float passing along a highway containing pigs, two of which had been previously ordered, and, whilst so travelling, asked other people if they wanted to buy pigs, and subsequently sold them all to various people. This was not a swine fever affected area, and there had been no licence obtained from the local authority. The magistrates held that there had been no contravention of the order of 1896, and dismissed the information.*

*Held (dismissing the appeal), that the magistrates were right, for, although there was a selling, there was no holding a sale.*

**T**HIS was a case stated by two of Her Majesty's justices of the peace acting in and for the petty sessional division of the hundred of Leyland in the county of Lancaster.

1. At a petty sessions holden at Chorley, in the county of Lancaster, on the 8th day of June, 1897, and by adjournment on the 6th day of July, 1897, before us the undersigned justices of the peace for the county, an information laid on the 5th day of June, 1897, by Duncan McLean, inspector of police for the county of Lancaster (hereinafter called the appellant), against William Monks of Hindley, in the same county, pig dealer (hereinafter called the respondent), was heard and determined by us.

2. The information was laid under the Markets and Fairs (Swine Fever) Order, 1896, by the appellant against the respon-

(a) Reported by W. DE B. HERBERT, Esq., Barrister-at-Law.

dent, charging that the respondent on the 1st day of May, 1897, at Coppull, unlawfully did remove, expose for sale, and sell certain pigs in contravention of an order of the Board of Agriculture, entitled "The Markets and Fairs (Swine Fever) Order, 1896."

3. Upon the hearing of the information it was proved by several witnesses, and admitted by the respondent, that the respondent (who lives some ten miles from Coppull, the place where the offence was alleged to have been committed) was in charge of a certain horse and float or vehicle on wheels, which was passing along the highway, and which contained a number of pigs, two of which pigs had previously been ordered upon approbation by one person, and that the respondent while so travelling asked other persons in Coppull aforesaid if they wanted to buy any pigs, and that he subsequently sold and delivered all the pigs to four persons at different farms in the township at fair and proper prices.

4. One of the witnesses for the prosecution stated that within three months after the sale to her three of the pigs so sold by the respondent died of swine fever, but no veterinary or other evidence was given as to the cause of death of such pigs, and we considered it immaterial to the issue before us.

5. For the defence all the facts were admitted, but it was contended that there had been no contravention of the Markets and Fairs (Swine Fever) Order, 1896, inasmuch as Coppull had not been declared by the Board of Agriculture to be in a swine fever infected area, the pigs were not removed contrary to any order of the Board of Agriculture, and they had not been exposed for sale and sold at a market, fair, sale, or exhibition held in contravention of the order of the 11th day of December, 1896; and it was admitted by the appellant that the township of Coppull had not been declared as within the infected area for the county of Lancaster.

6. On the above facts and admissions we held as a matter of law that there had been no contravention of the Markets and Fairs (Swine Fever) Order, 1896, as the order was made under the Diseases of Animals Act, 1894, sect. 22, sub-sect. xix., and that neither the sub-section of the Act nor the Order of 1896 refer to private sales such as those made by the respondent in this case, and we thereupon dismissed the information.

7. The question for the opinion of the Court is, whether our determination was right in point of law. If the Court should be of that opinion, the information to stand dismissed; but if the Court should be of opinion otherwise, the Court is humbly solicited to remit the case to us with an intimation of their opinion to that effect, or to make such other order in the premises as to the Court shall seem just.

Given under our hands this 23rd day of September, 1897.

JAMES ALFRED HARRIS.

H. INCE ANDERTON.

McLEAN  
v.  
MONK.  
—  
1897.

*Diseases of  
animals—  
Swine—  
Private sale—  
Markets and  
Fairs (Swine  
Fever) Order,  
1896—57 & 58  
Vict. c. 57,  
c. 22 (sic.)*

McLEAN  
v.  
MONK.

1897.

*Diseases of  
animals—  
Swine—*

*Private sale—  
Markets and  
Fairs (Swine  
Fever) Order  
1896—57 & 58  
Vict. c. 57,  
s. 22 (six.)*

By the Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57),  
s. 22 :

The Board of Agriculture may make such orders as they think fit, subject and according to the provisions of this Act, for the following purposes, or any of them:

xix. For prohibiting or regulating the holding of markets, fairs, exhibitions, or sale of animals.

By the Markets and Fairs (Swine Fever) Order of 1896 :

2. Notwithstanding any regulation made by local authority under any order of the Board, no market, fair, sale, or exhibition of swine shall be held in a district to which this order applies, except as expressly authorised by this order.

4. A sale of swine (not being in a swine fever infected area) may be held with the licence of the local authority.

*Pickford, Q.C. and W. G. Clay for the appellant.*

*J. Ogle for the respondent.*

DAY, J.—There seems to be a selling, but not a holding of sale. The appeal must be dismissed.

LAWRANCE, J.—No doubt the order meant to prohibit a sale like this, but it does not do so ; therefore, I think the magistrates were right.

*Appeal dismissed.*

Solicitors for the appellant, *Ridsdale and Sons.*

Solicitor for the respondent, *W. W. Comins, for Henry Bryan Hindley.*

## QUEEN'S BENCH DIVISION.

*Friday, Jan. 14, 1898.*

(Before DAY and LAWRENCE, JJ.)

BUCKLEY v. HANSON. (a)

*Highway surveyor—Supplying team work—Member of district council—Surveyor or not—Highway Act, 1835 (5 & 6 Will. 4, c. 50), s. 46—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 144—Local Government Act, 1894 (56 & 57 Vict. c. 73), ss. 25, 46.*

*By the Highway Act, 1835, s. 46, the surveyor of the parish may contract for the purchasing, getting, and carrying of materials required for the repairing of the highways, but he may not share or have any interest in any such contract without the licence in writing of two justices of the peace previously obtained by him, under certain penalties.*

(a) Reported by W. DE B. HERBERT, Barrister-at-Law.

*By the Public Health Act, 1875, s. 144, urban authorities have the powers of surveyors of highways and of parish vestries under the Highways Acts.*

*By the Local Government Act, 1894, s. 25, the district council of every rural district " . . . shall also have as respects highways all the powers, duties, and liabilities of an urban sanitary authority under sects. 144 to 148 of the Public Health Act, 1875, and those sections shall apply in the case of a rural district and of the council thereof in like manner as in the case of an urban district and an urban authority." And by sect. 46 of that Act a person is not to be disqualified from being a member of the council "by reason of being interested . . . in the transport of materials for the repair of roads or bridges in his own immediate neighbourhood."*

*The respondent H. was a member of the Saddleworth District Council, and in March, 1897, he on his own account let to hire a team to be used in repairing a highway within the district of the council of which he was a member, and he received from the council payment in respect thereof. He did not before letting for hire as aforesaid obtain any licence in writing from two justices of the peace. He was thereupon proceeded against summarily for the penalties prescribed by the Highways Act, 1835, s. 46: But the magistrates dismissed the summons.*

*Held (dismissing the appeal), that the magistrates were right.*

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v.  
HANSON.

1898.

Highways —  
Surveyor —  
Employing  
team labour —  
Member of  
district  
council—  
5 & 6 Will. 4,  
c. 50, s. 46;  
38 & 39 Vict.  
c. 55, s. 144;  
56 & 57 Vict.  
c. 73, ss. 25,  
46.

**T**HIS was a case stated by two of Her Majesty's justices of the peace in and for the West Riding in the county of York, for the purpose of obtaining the opinion of the High Court on the questions of law which arose before them as herein-after mentioned.

At a petty sessions holden at Uppermill in and for the division of Saddleworth, in the West Riding of the county of York, on the 14th day of July 1897 two informations, preferred by George Frederick Buckley (hereinafter called the appellant) against Buckley Hanson (hereinafter called the respondent) under sect. 6 of 5 & 6 Will. 4, c. 50, charging that the respondent, on the 20th day of March, 1897, then being a surveyor of the highways for the Rural District of Saddleworth in the Riding, unlawfully did have a certain part, share, and interest in a certain contract or bargain entered into by the Saddleworth Rural District Council with him for certain work to be made and done upon and on account of the highways of the Rural District of Saddleworth, then alleged to be under his care and management, and also on the 8th day of March, 1897, then being such surveyor as aforesaid, unlawfully did upon his own account use or let to hire a team, he, the respondent, not having before then obtained, from two justices of the peace in petty sessions assembled, licences in writing for the purposes, were heard and determined by us, the parties respectively being then present, and upon such hearing we dismissed the informations and ordered the appellant to pay

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1898.

Highways—  
Surveyor—  
Employing  
team labour—  
Member of  
district  
council—

5 & 6 Will. 4, case :—

c. 50, s. 46;  
38 & 39 Vict.  
c. 55, s. 144;  
56 & 57 Vict.  
c. 73, ss. 25,  
46.

to the respondent the sum of 1l. 1s. for his costs incurred by him in his defence on that behalf. And as the appellant was dissatisfied with our determination upon the hearing of the informations as being erroneous in point of law, and has pursuant to the statutes in that behalf duly applied to us in writing to state and sign a case setting forth the facts and grounds of such our determination for the opinion of this Court, and has duly entered into a recognisance as required by the statutes in that behalf. Now therefore we, the justices, in compliance with the application and the provisions of the statutes, do hereby state the following

Upon the hearing of the information it was proved on the part of the appellant and we found as facts :

1. That the respondent is a member of the Saddleworth Rural District Council, and has acted as such.

2. That on the 8th day of March, 1897, being then a member of the Saddleworth Rural District Council, he, the respondent, did upon his own account use or let to hire a team to be used or employed in repairing New Tame-lane as a highway within the district of the Saddleworth Rural District Council, repairable out of the rates by the district council; and that he received amongst other items from the district council on the 20th day of March, 1897, the sum of 16s. in respect of the hire of the team.

3. That the New Tame-lane is an ancient parish highway, and is situated within the Rural District of Saddleworth, in the immediate neighbourhood of the respondent.

4. That the respondent did not first, before using or letting to hire the team, obtain from two justices of the peace in special sessions assembled a licence in writing to let to hire such team.

It was contended on behalf of the appellant that, by virtue of 56 & 57 Vict. c. 73 (the Local Government Act, 1894), s. 25; 38 & 39 Vict. c. 55 (the Public Health Act, 1874), s. 144; and 5 & 6 Will. 4, c. 50 (the Highway Act, 1835), s. 46, the respondent was a surveyor within the meaning of the Highway Act, 1835, and that as such he was liable to the penalty thereby imposed.

It was also contended on behalf of the appellant that sect. 46 of the Highway Act, 1835, has not been either directly or by implication repealed by sect. 46 of the Local Government Act, 1894.

It was contended on behalf of the respondent that he was not a surveyor within the meaning of sect. 46 of the Highway Act, 1835, and that the liability upon a surveyor under such Act to a penalty, unless he had obtained the licence of two justices in special sessions assembled, was in effect repealed by sect. 46 of the Local Government Act, 1894; and, further, that sect. 46 of the Local Government Act, 1894, provided that the district council might contract with a member of the council to supply team work in his own immediate neighbourhood.

The justices being of opinion (1) that the term "surveyor or

surveyors" in sect. 46 of the Highway Act, 1835, now applies to the rural district council and not to any individual; (2) that the respondent, as an individual, was not the surveyor of highways, and that it was not part of his duty to make application to the justices for licences in writing, and that, if it were incumbent on anybody to make such application, it was for the district council to make it, gave their determination against the appellant in the manner before stated.

The questions of law arising on the above statement for the opinion of the Court therefore were: 1. Whether the respondent was the surveyor of highways or a surveyor of highways within the meaning of sect. 46 of 5 & 6 Will. 4, c. 50; if so, 2. Whether sect. 46 of 5 & 6 Will. 4, c. 50, is now repealed by virtue of sect. 46 of the Local Government Act, 1894, or by any other statute. 3. Whether the justices were justified in law in dismissing the informations, and, if not, what should be done in the premises.

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v.  
HANSON.

1898.

Highways—  
Surveyor—  
Employing  
team labour  
Member of  
district  
council—

5 & 6 Will. 4,  
c. 50, s. 46;  
38 & 39 Vict.  
c. 55, s. 144;  
56 & 57 Vict.  
c. 73, ss. 25,  
46.

By the Highway Act, 1835 (5 & 6 Will. 4, c. 50), s. 46:

In every parish the surveyor may and is hereby authorised, with the consent of the inhabitants in vestry assembled, to contract for purchasing, getting, and carrying the materials required for the repair of the highway, and if any surveyor shall have any part, share, or interest, directly or indirectly, in any contract or bargain for work or materials to be made, done, or provided upon, for, or on account of any of the highway or other works whatsoever under his care or management, or shall upon his own account, directly or indirectly, use or let to hire any team, or use or sell, or dispose of any materials to be used or employed in making or repairing such highway or other works as aforesaid (unless a licence in writing for the sale of any such materials or to let to hire any such team, be first obtained from two justices of the peace in special sessions assembled), he shall forfeit for every such offence on conviction, any sum not exceeding ten pounds, and be for ever after incapable of being employed as a surveyor with a salary under the authority of this Act.

By the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 144:

Every urban authority shall within their district exclusively of any other person execute the office of and be surveyor of highways, and have, exercise, and be subject to all the powers, authorities, duties and liabilities of surveyors of highways under the law for the time being in force, save so far as such powers, authorities, or duties are or may be inconsistent with the provisions of this Act; every urban authority shall also have, exercise, and be subject to all the powers, authorities, duties, and liabilities which by the Highway Act, 1835, or any other Act amending the same, are vested in and given to the inhabitants in vestry assembled of any parish within their district. All ministerial acts required by any Act of Parliament to be done by or to the surveyor of highways may be done by or to the surveyor of the urban authority, or by or to such other person as they may appoint.

By the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 25:

(1.) As from the appointed day there shall be transferred to the district council of every rural district all the powers, duties, and liabilities of the rural sanitary authority in the district, and of any highway authority in the district, and highway boards shall cease to exist, and rural district councils shall be the successors of the rural sanitary authority and highway authority, and shall also have as respects highways all the powers, duties, and liabilities of an urban sanitary authority under sections one hundred and forty-four to one hundred and forty-eight of the Public Health Act, 1875, and those sections shall apply in the case of a rural district, and of the council thereof, in like manner as in the case of an urban district and an urban authority.

Harper (Macmorran, Q.C. with him), for the appellant,



- BUCKLEY referred to the Highway Act, 1835, s. 46; the Public Health Act, 1875, s. 144; the Local Government Act, 1894, ss. 25 (1), 144. The case of *Bartle v. Piggott* (31 L. T. Rep. 404) decided payments were illegal. [LAWRANCE, J.—That case does not help you at all.]
- HANSON.*  
1898.  
Highways—  
Surveyor—  
Employing  
team labour—  
Member of  
district  
council—  
5 & 6 Will. 4,  
c. 50, s. 46;  
38 & 39 Vict.  
c. 55, s. 144;  
56 & 57 Vict.  
c. 73, ss. 25,  
46.
- C. A. Russell*, Q.C. (with him *Mallinson*) for the respondent.  
—The application is wholly misconceived. *Hanson* never was a surveyor of highways. The district council as a corporate body are the surveyors.  
DAY, J.—I find against the appellant in fact and law, and the appeal must be dismissed with costs.  
LAWRANCE, J.—I concur.
- Appeal dismissed.*
- Solicitors for the appellant, *Learoyd, James, and Mellor*, for *Learoyd and Co.*, Huddersfield.  
Solicitors for the respondent, *Busk and Mellor*, for *Bradbury, Ashton-under-Lyne*.

## QUEEN'S BENCH DIVISION.

*Tuesday, Jan. 18, 1898.*

(Before DAY and LAWRANCE, JJ.)

BULLEN (app.) v. WAKELY (resp.). (a)

*Highway—Cutting trees near—Timber trees—Yew—Highway Act 1835 (5 & 6 Will. 4, c. 50), ss. 65, 66.*

*By the Highway Act, 1835, s. 65, if any obstruction is caused to any way by a tree the owner may be summoned by the surveyor to show cause why such tree is not lopped, or why the obstruction should not be removed, and the owner shall comply with the order of the magistrates within ten days of the order being left on him.*

*By sect. 66: "Provided always . . . that no person shall be obliged to fell any timber trees growing in hedges at any time whatsoever, except where the highways shall be ordered to be widened or enlarged as herein mentioned, or then to cut down . . . any oak . . . except in the months of April, May,*

(a) Reported by W. DE B. HERBERT, Esq., Barrister-at-Law.

*or June, or any ash, elm, or other trees in any other months than December, January, February, or March.*

*The appellant Bullen was summoned under sect. 65 for that a yew tree growing on his lands obstructed a carriage-way, and the magistrates made an order for its removal. It was contended on his behalf that, as no order had been made for widening the road, under sect. 66, he could not be ordered to remove it, even if it was an obstruction. But, even if they could order its removal, they could not do so in July, when they made the order.*

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WAKELY.

1898.

Highway —  
Cutting trees  
near— Timber  
— Yew—5 & 6  
Will. 4, c. 50,  
ss. 65, 66.

*Held (affirming the magistrate), that the order was right, and that sect. 66 did not apply to such a case as this at all.*

THIS was a special case stated by two of the justices of the peace for the county of Dorset.

At a petty sessions held at Bridport on the 19th day of July, 1897, a complaint was preferred by the respondent against the appellant under sect. 65 of the Highway Act, 1835, that the carriage-way or cartway leading from Bettiscombe to Marshwood Cross was obstructed by a tree, and that such tree was growing on lands known as Cowdea, in the parish of Marshwood, in the occupation of Robert Long, and of which John B. T. Bullen, the appellant, was the owner, next adjoining such carriage or cartway.

On the hearing of the case it was proved on behalf of the respondent, who was the surveyor of highways for the Rural District Council of Beaminster, that the tree was an old yew; that notices had been served on Long and on the appellant to move the tree, as it caused an obstruction to the highway; that no order had been made for the enlargement or widening of the highway, but as the tree existed it was a nuisance and danger.

The appellant offered no evidence at the hearing.

It was contended on behalf of the appellant: (1) that, as it was admitted by the respondent that no order had been made for widening or enlarging the highway, sect. 66 precluded the appellant from being obliged or ordered to remove the tree in question even if it was an obstruction to the highway; and (2) that, having regard to that section, the justices could not under any circumstances at the date of the hearing of the complaint, namely, on the 19th day of July, 1897, make an order for the removal of the tree in question.

But the justices were of opinion that the tree in question was a distinct obstruction and a source of danger to the public; and further, that the constructions placed upon sect. 66 by the appellants were not the right ones, and, if right, would render the purpose of sect. 65, as to the removal of obstructions by trees, abortive, and that the right construction of sect. 66 merely was to relieve the appellant from the obligation of carrying out the order of removal till December.

The justices further determined that the tree had not been

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planted for ornament, or for shelter to any hop-ground, house, building, or court-yard of the owner thereof, and was an obstruction to the highway, and they ordered it to be removed.

The questions for the determination of the Court were whether (1), as no order had been made for widening or enlarging the highway, sect. 65 confers no power upon the justices to order the removal of the tree, even if it obstructs the highway; (2) the justices could not under any circumstances make an order on the 19th day of June, 1897, for the removal of the tree.

By the Highway Act 1835 (5 & 6 Will. 4, c. 50), s. 65 :

If the surveyor shall think that any carriage-way or pathway is prejudiced by the shade of any hedges, or by any trees, except those trees planted for ornament or for shelter to any hop-ground, house, building, or courtyard of the owner thereof growing in or near such hedges or other fences, and that the sun and wind are excluded from such highway, to the damage thereof, or if any obstruction is caused in any carriage-way or cartway by any hedge or tree, it shall be lawful for any one justice of the peace, on the application of the said surveyor, to summon the owner of the land on which such hedges or trees are growing next adjoining to such carriage-way or cartway to appear before the justices at a special session for the highways to show cause why the said hedges were not cut, pruned, or plashed, or such trees not pruned, or lopped, in such manner that the carriage-way or cartway shall not be prejudiced by the shade thereof, and that the sun and wind may not be excluded by such carriage-way or cartway to the damage thereof, or why the obstruction caused in such carriage-way or cartway should not be removed, and the question as to the cutting pruning, or plashing such hedges, or the pruning and lopping such trees, or the removal of such obstruction as aforesaid, shall upon proof of the service of such summons, and whether the said owner attend or not, be determined at the discretion of such last-mentioned justices, and if such justices shall order and direct that such hedges shall be cut, pruned, or plashed, or such trees pruned or lopped in manner aforesaid, or such obstruction removed, the said owner shall comply therewith within ten days after a copy of such order shall have been left at the usual place of abode of the said owner or of his steward or agent, and in default thereof shall forfeit on conviction a sum not exceeding forty shillings, and the said surveyor, if the order of the said justices is not complied with, shall, and he is hereby authorised and required to cut, prune, or plash such hedges, and to prune and lop such trees, for the benefit and improvement of the highway, and to remove such obstruction as aforesaid, to the best of his skill and judgment, and according to the true intent and meaning of this Act.

By sect. 66 :

Provided always, that no person shall be compelled nor any surveyor permitted, to cut or prune any hedge at any other time than between the last day of September and the last day of March; and that no person shall be obliged to fell any timber trees growing in hedges at any time whatsoever except where the highways shall be ordered to be widened or enlarged as herein mentioned, or then to cut down or grub up any oak trees growing in such highway or in such hedges except in the months of April, May, or June, or any ash, elm, or other trees in any other months than December, January, February, or March.

*E. U. Bullen and Cane* for the appellant.

*Alex. Glen* for the respondent.

DAY, J.—I cannot see any objection to this order. It is an ordinary one and must stand. The magistrates were right.

LAWRANCE, J.—I agree. If the counsel for the appellant is right, and sect. 66 applies, and this yew is a timber tree, the appellant cannot be made to cut down this tree at all. But what is dealt with here is sect. 65. Sect. 66 could not apply to this

case at all. The question is one of obstruction or not, not whether it is a timber tree or not.

*Appeal dismissed.*

Solicitors for the appellant, *Savery and Stevens*.

Solicitor for the respondent, *J. P. Rutland*, for *R. Leigh*, Beaminster.

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Cutting trees  
near—Timber  
—Yew—5 & 6  
Will. 4, c. 50,  
ss. 65, 66.

## QUEEN'S BENCH DIVISION.

*Thursday, Jan. 20, 1898.*

(Before DAY and LAWRENCE, JJ.)

MILLARD (app.) v. WASTALL (resp.). (a)

*Public health—Smoke nuisance—Notice to abate—No specification of works to be done—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 91, 94.*

*By sect. 94 of the Public Health Act, 1875, the notice required under sect. 91 to abate a nuisance shall be a notice requiring the person causing the nuisance "to abate the same within a time to be specified in the notice, and to execute such works and do such things as may be necessary for that purpose."*

*The respondent Wastall was summoned before the justices, under sect. 91 and subsequent sections, for permitting black smoke to be discharged from a chimney not being a chimney belonging to a private dwelling-house in such quantity as to be a nuisance.*

*A preliminary objection was taken that the notice under the Act was bad on the ground that it did not set out the works required to be done in order to remedy the nuisance.*

*The justices upheld the objection and dismissed the summons.*

*Held (reversing the decision of the justices), that the notice was quite sufficient, as no works were required to be done, but only the black smoke to be stopped.*

THIS was a case stated by two of Her Majesty's justices of the peace for the borough of Ramsgate in the county of Kent, under the statute 42 & 43 Vict. c. 49, on the application in writing of the appellant, who was dissatisfied with their determination on the question of law hereinafter stated.

At the hearing of a certain complaint preferred by the appellant acting as inspector of nuisances for the borough of Ramsgate, against the respondent stating that there exists in or on

(a) Reported by W. DE B. HERBERT, Esq., Barrister-at-Law.

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—  
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Smoke—  
Notice to  
abate—  
Sufficiency of  
notice—  
Works not  
specified—  
Public  
Health Act,  
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c. 55, ss. 91,  
94.

certain premises being a factory situated at the rear of No. 61, Queen-street, in the parish of Ramsgate, the following nuisance, that is to say, a chimney (not being the chimney of a private dwelling-house) sending forth black smoke in such a quantity as to be a nuisance, and that the nuisance arises by the sufferance of one Ernest Edward Wastall, the occupier of the premises, and that Ernest Edward Wastall has made default in complying with the requisitions of a certain notice served upon him on the 26th day of June, 1897, requiring him to abate such nuisance. The following facts were proved before the justices:—

That the respondent was the occupier of the premises, No. 61, Queen-street, Ramsgate, and the factory referred to.

That on the 26th day of June, 1897, the appellant served on the respondent a notice in the following terms:

The Public Health Act, 1875.—To Mr. Ernest Edward Wastall, the occupier of certain premises being a factory at the rear of No. 61, Queen-street, and situate in the parish of Ramsgate, and within the borough of Ramsgate.—Take notice that under the provisions of the Public Health Act, 1875, the committee appointed by the council of the borough of Ramsgate (being the urban district council of the borough) to execute such portions of the Act as relate to nuisances, and acting as the local authority for the said borough, being satisfied of the existence of a nuisance at the premises above described arising from a chimney in the rear (not being a chimney of a private dwelling-house) sending forth black smoke in such a quantity as to be a nuisance, do hereby require you within seven days from the service of this notice to abate the same, and for that purpose to abstain at all times hereafter from doing or suffering to be done anything which shall cause the chimney to send forth black smoke in such quantity as to be a nuisance. If you make default in complying with the requisitions of this notice, or if the nuisance though abated is likely to recur, a summons will be issued requiring your attendance to answer a complaint which will be made before a court of summary jurisdiction for enforcing the abatement of the nuisance, and prohibiting a recurrence thereof, and for recovering the costs and penalties that may be incurred thereby.—Dated this 25th day of June, 1897.—WILLIAM DAVID MILLARD, Inspector of Nuisances to the said Urban District Council.

That on various dates between the 7th day of May and the 23rd day of July, 1897, black smoke was seen issuing from the chimney of the factory which was described by the witnesses as being in such quantities as to be a nuisance.

It was contended on behalf of the respondent, that the notice set out above and served on the respondent by the appellant was not sufficient notice in pursuance of sect. 94 of the Public Health Act, 1875, as it did not specify the works required to be done in order to abate the alleged nuisance, and was not in accordance with the forms in the schedule to the Act, which are made part of the Act by sect. 317 thereof.

The attention of the justices was further directed to the case of *Reg. v. Wheatley* (54 L. T. Rep. 680; 16 Q. B. Div. 34).

They were of opinion that the notices given by the appellant to the respondent did not comply with the requirement of the Public Health Act, having regard to the decision referred to, and they therefore dismissed the complaint on that ground, and without calling upon the respondent for evidence or deciding the case on its merits.

The question of law upon which the case is stated, and for the

opinion of the Court therefore, was : (1) Whether the notice given by the appellant to the respondent was a good and sufficient notice to abate a nuisance, and the justices should have heard evidence for the respondent and adjudicated on the case ; or (2) Whether, the notice being defective and insufficient, the justices were right in dismissing the case without deciding on its merits.

If the Court should be of opinion that their construction of the requirements of the Act as to the notice was correct, then the order of dismissal was to stand ; but if the Court should be of opinion otherwise, then it was desired that the Court would, according to the power vested in it by statute, remit the case back to the justices, with the opinion of the Court thereon, in order that they might hear the respondent's witnesses and adjudicate upon the complaint.

By the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 91 :

For the purposes of this Act . . . (7) . . . any chimney (not being the chimney of a private dwelling-house) sending forth black smoke in such quantity as to be a nuisance . . . shall be deemed to be nuisances liable to be dealt with summarily in manner provided by this Act.

By sect. 94 :

On the receipt of any information respecting the existence of a nuisance the local authority shall, if satisfied of the existence of a nuisance, serve a notice on the person by whose act, default, or sufferance the nuisance arises or continues, or if such person cannot be found, on the owner or occupier of the premises on which the nuisance arises, requiring him to abate the same within a time to be specified in the notice, and to execute such works and do such things as may be necessary for that purpose.

*F. Low* for the appellant.

The respondent did not appear.

DAY, J.—No one has seen fit to appear for the respondent, and the notice is quite sufficient as far as I can see. There is no specific to cure chimneys, and the authorities are not bound to invent "works" in their notice to remedy. They do not want any works done, but only the black smoke stopped.

LAWRANCE, J.—I agree. That is under sect. 91, and does not come under sect. 96.

*Appeal allowed.*

Solicitors for the appellant, *Meredith, Roberts, and Mills*, for *Hubbard, Ramsgate*.

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WASTALL.  
—  
1898.

Nuisance—  
Smoke—  
Notice to  
abate—  
Sufficiency of  
notice—  
Works not  
specified—  
Public  
Health Act,  
1875—  
38 & 39 Vict.  
c. 55, ss. 91,  
94.



## QUEEN'S BENCH DIVISION.

*Jan. 26 and 27, 1898.*

(Before DAY and LAWRENCE, JJ.)

ROGERS (app.) v. THE MANCHESTER CENTRAL PACKING COMPANY  
(resps.). (a)

*Factory—Bleaching and dyeing works—Hooking, lapping, packing,  
—Factory and Workshop Act, 1878 (41 Vict. c. 16), s. 93,  
Fourth Schedule, Part 1, sect. 2.*

*By the Factory and Workshop Act, 1878, in the Fourth Schedule,  
Part 1, sect. 2, bleaching and dyeing works are defined as  
“any premises in which bleaching, beetling, dyeing, calendering,  
finishing, hooking, lapping, and making-up and packing any  
yarn or cloth of any material, or the dressing or finishing of  
lace, or any one or more of such processes, or any process inci-  
dental thereto, are or is carried on.”*

*By sect. 93, the word “factory” means “textile factory and non-  
textile factory,” and “non-textile factory” includes any places  
named in Part 1 of the Fourth Schedule.*

*The respondents were engaged in hooking, lapping, making-up,  
and packing cloth for exportation, which they received in a  
finished state from the manufacturers. They were summoned  
by the appellant for employing a young woman contrary to  
the Factory Acts. It was contended on behalf of the respon-  
dents that their premises were not a factory within the  
meaning of the Act, as the hooking, lapping, making-up, and  
packing were not carried on incidentally to bleaching and  
dyeing.*

*The magistrates decided in favour of the respondents.*

*Held, that the decision was wrong, as the premises came within  
“bleaching and dyeing works” as defined by the Act, though  
not within the ordinary sense.*

CASE stated by the stipendiary magistrate for the city of  
Manchester.

Upon the hearing of a certain information preferred by the  
appellant, Her Majesty's Inspector of Factories for the Man-  
chester district under the Factory and Workshops Act, 1878 to  
1895, that, on the 28th day of June, 1897, the respondents then  
and there (in the city of Manchester) being the occupiers of a

(a) Reported by W. DE B. HERBERT, Esq., Barrister-at-Law.

certain factory, the same being a factory within the true intent and meaning of the Acts, did employ one Agnes Surcliffe, a young person, after the hour of eight o'clock in the afternoon, contrary to the provisions of the said Acts.

After the hearing of the case he dismissed the information on the 27th day of August, 1897, on the ground that the premises of the respondent were not a factory within the meaning of the Act recited.

The following facts were admitted by both parties :

That the respondents were the occupiers of the premises referred to in the information, and that they carried on the business of making-up and packers therein. That this business is exclusively the hooking, lapping, making-up, and packing of cloth for exportation, and that in the course of such business they received the cloth from their employers, the shipping merchants, in the finished condition in which it was received from the manufacturers. According to the respondents' instructions from the merchant owner of the cloths, the respondents measure and cut it into lengths; and these lengths are then folded in different ways by the respondents according to the instructions of the shipping merchant. After binding or stitching the ends of the folds together in order to keep them straight, the cloth is made up into neat parcels, and plain or commercial labels, descriptive of the contents are affixed thereon. A number of these parcels are then placed together and hydraulic pressure is applied to reduce the bulk, and so lessen the cost of transit. All the above-mentioned processes are carried on by the respondents, who usually despatch the packed goods direct from their warehouse to the respective shipowners for delivery to the shipping merchant's customers abroad.

It was further admitted that the processes in the respondents' business hereinbefore described are essential processes in their business and are properly called hooking, lapping, making-up, and packing; that mechanical power was used by the respondents in aid of some of these processes, and that by the operation of "hooking" and "lapping" the cloth is measured and folded, but that none of the processes are carried on by the respondents as incidental to bleaching or dyeing.

It was admitted by the respondents that the young person named in the information was employed by them on the premises in the process of hooking cloth at 8.50 p.m. on the day stated.

It was further admitted that all the processes of bleaching, beetling, dyeing, calendering, finishing, hooking, lapping, and making-up and packing of cloth, enumerated in the sub-schedule cited, are frequently carried on together in the same works or premises which are known as and are commonly called bleaching and dyeing works, but that one or more of these processes, and in particular hooking, lapping, making-up, and packing, are also carried on as separate trades by different employers, also that

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Factory—  
Bleaching  
and dyeing  
works—  
Hooking,  
lapping, and  
packing—  
41 & 42 Vict.  
c. 16, s. 93,  
sch. 4, pt. 1,  
s. 2.*

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*Factory and  
Workshop  
Act, 1878—  
Factory—  
Bleaching  
and dyeing  
works—  
Hooking,  
lapping, and  
packing—  
41 & 42 Vict.  
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s. 2.*

one or more of the processes of hooking, lapping, making-up, or packing is or are carried on in all bleach or dyeworks.

It was also admitted that it was part of the bargain between the merchant and his customers that the cloth should be made up in a particular way, and that the packer was to make up the cloth accordingly in the way in which the merchant knew the customer desired, but such instructions were received from the shipping merchant only.

Lastly, it was admitted by the respondents that, if their premises came within the definition of a factory under the 93rd section of the Act 41 Vict. c. 16, the young person named in the information was employed contrary to the provisions of the Act on the day charged.

It was contended for the respondents that their premises were not a factory within the meaning of sect. 93 of the Act for the following reasons:—(a) That the hooking, lapping, and making-up and packing were not carried on incidentally to bleaching and dyeing. (b) That the operation of folding and making-up the cloth was not an adaptation for sale.

The appellant contended that any premises where hooking, lapping, and making-up, and packing were carried on were a bleaching and dyeing works within the sub-schedule cited, and therefore a factory under sect. 93 of the Act, and he relied on the words “any one or more of such processes” in the schedule, and on the word “warehouses” in sect. 93 of the Act. Alternatively that the making up of the goods by the aid of mechanical power in a particular way as described, to suit the merchant’s customers, was an adaptation for sale.

The magistrates being of opinion that the respondents’ contention on both points was right, gave his determination against the appellant in the manner before stated.

The question of law upon which the case was stated for the opinion of the Court, therefore, was whether, upon the facts above stated, the respondents’ premises were a factory within sect. 93 of the Factory and Workshop Act, 1878 (41 Vict. c. 16).

By the Factory and Workshop Act, 1878 (41 Vict. c. 16), s. 93:

The expression “Factory” in this Act means a textile factory and non-textile factory, or either of such descriptions of factories.

The expression “Non-textile factory” in this Act means:—(1) Any works, warehouses, furnaces, mills, foundries, or places named in part 1 of the 4th Schedule in the Act . . . (3) Also any premises, wherein, or within the close or curtilage or precincts of which any manual labour is exercised by way of trade or for purposes of gain in or incidental to the following purposes, or any of them, that is to say, (a) . . . (b) . . . (c) In or incidental to the adapting for sale of any article, and wherein or within the close or curtilage or precincts of which steam, water, or other mechanical power is used in aid of the manufacturing process carried on there.

By the 4th Schedule, part 1, sect. 2:

“Bleaching and Dyeing Works,” that is to say, any premises in which bleaching, dyeing, calendering, finishing, hooking, lapping, and making-up and packing any yarn or cloth of any material, or the dressing or finishing of lace, or any one or more of such processes, or any process incidental thereto is carried on.

The *Attorney-General* (Sir R. Webster, Q.C.) and *H. Sutton* for the appellant.—It is quite clear, on looking at the course of legislation, that these premises are included under the word “factory” as defined by the Factory and Workshops Act, 1878 (41 Vict. c. 16), in sect. 93 and schedule 4. These are premises in which hooking, lapping, making-up, and packing are done. The meaning of the present Act appears clearly from looking at the former statutes. [They referred to the Bleaching and Dyeing Works Act, 1860.] In 1862 the case of *Howarth v. Coles* (6 L. T. Rep. 785; 12 C. B. N. S. 139) was decided under the Act of 1860, and, in consequence, in 1863 was passed the statute 26 & 27 Vict. c. 38, which was further extended in 1864 by 27 & 28 Vict. c. 98. In 1867 further amendment was passed, and in 1890, by 33 & 34 Vict. c. 62, all bleaching and dyeing premises were put under the Factory Acts.

*Lazarus Langdon* for the respondents.—This definition in the schedule was meant to deal with works where some of those processes, together with bleaching and dyeing, were carried on.

DAY, J.—I think it clear to my mind that the Legislature have the power of regulating what are called factories. It was thought fit to do so, amongst other things, by the statute which provides that: “The expression ‘non-textile factory’ in this Act means (1) any works, warehouses, furnaces, mills, foundries or places named in Part 1 of the Fourth Schedule to this Act.” I am inclined to think this is probably not a warehouse in the ordinary sense of the word, but it is a place where people work, and it is undoubtedly a place within the fourth schedule. When I look at the fourth schedule I find [reads it]. Whether this is a place where bleaching and dyeing may or may not be carried on I do not care to inquire, but it is premises upon which “hooking, lapping, making-up, and packing, or any process incident thereto,” are carried on. That is quite sufficient to bring it within “bleaching and dyeing” as defined by the Act, and, although these premises are not within the ordinary meaning of the words “bleaching and dyeing works,” they clearly come within the meaning of the Act.

LAWRANCE, J.—I entirely agree.

*Appeal allowed.*

Solicitor for the appellant, *The Solicitor to the Treasury*.

Solicitors for the respondents, *Pritchard, Englefield, and Co.*, for *Hill and Doughty*, Manchester.

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Bleaching  
and dyeing  
works—  
Hooking,  
lapping, and  
packing—  
41 & 42 Vict.  
c. 16, s. 93,  
sch. 4, pt. 1,  
s. 2.*

## QUEEN'S BENCH DIVISION.

*Monday, Jan. 17, 1898.*

(Before DAY and LAWRENCE, JJ.)

GAYFORD (app.) v. CHOULER (resp.). (a)

*Wilful or malicious damage to property—Person walking across grass field—Damage to grass—Conviction for wilful damage—Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 52.*

*The appellant was summoned under sect. 52 of the Malicious Damage Act, 1861, for wilfully and maliciously damaging certain grass in the respondent's field. It was proved that the appellant, in passing from one footpath to another, walked across the respondent's grass field for a distance of about 130 yards—the grass being thick and deep; that he passed notice boards showing that there was no right of way; that he claimed no right of way; that after the respondent had told him he had no right to be there he persisted in going on, and said he should continue to cross the field when he chose. The justices found as a fact that, as the grass was long and thick, the appellant must have done some damage to the grass, and that he did actual damage to the amount of sixpence, and, being of opinion that the trespass was a wilful and malicious act, they convicted the appellant under the section.*

*Held, that, upon the facts proved, the appellant was properly convicted under sect. 52 of having committed wilful or malicious damage to property.*

CASE stated by justices of the peace for the county of Nottingham.

On the 24th day of July, 1897, the appellant was convicted on an information and summons before the justices of a Court of summary jurisdiction at Nottingham, under sect. 52 of the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), of having on the 12th day of July, 1897, unlawfully, wilfully, and maliciously damaged to the amount of sixpence certain grass the property of the respondent, and then and there growing in a certain field in his occupation.

At the hearing of the information the complainant (the present respondent) was examined, and he stated that he was the tenant of a certain farm; that about 7.45 p.m. on the 12th day of July he saw the defendant (the present appellant) and two other men

(a) Reported by W. W. ORR, Esq., Barrister-at-Law.

together on the public footpath leading from Attenborough to Barton Ferry; that at a certain point they left that footpath and walked abreast across his (the complainant's) grass field towards another point; that they crossed the field from the former point in a line to another path at the latter point, a distance of about 130 yards; that they walked through the grass all that distance and trampled it down and damaged it; that it was good grass, very thick and deep, up to the knees; that in consequence of trespassers he had up at that time two large notice boards with the words "No road" in large letters, and that anyone starting from either point could see the notice, and that the defendant and his friends passed the notice boards in going from the one point to the other; that he (the complainant) went after the defendant and his friends and said that they had no right there, to which the defendant replied: "We are doing no harm. I know the law of trespass as well as you. I shall not turn back. If you wait half an hour you will see me come back. I shall continue to come across the field as often as I like"; that all three continued walking abreast across the field in the line in which they were going; that the damage done by the defendant alone was to the amount of 6*d.*; and in cross-examination the complainant said that the grass was grazing grass; that there were cattle in the field, and had been for some time, and there was a stile on the footpath leading from the field, but that there was no defined path where the men crossed.

No right of way was alleged or claimed on behalf of the defendant.

For the defence a witness was examined who knew the field, and who stated that in his opinion one person walking across the field would not do the amount of damage claimed, and, in fact, would not do any damage by merely walking across the field, and that the previous tenant had never complained of persons walking across the field.

On the part of the defendant it was contended as a question of law that the alleged trespass of merely walking over grass was not such a wilful or malicious act of damage as was contemplated by sect. 52, under which the summons was taken out; and also that no actual damage could have been or was done by the alleged trespass, and that the justices had no jurisdiction, and that the only remedy for such a trespass was a civil and not a criminal one.

The justices considered that it was a case within their jurisdiction, and after looking at the fact that the appellant did not claim any right of way along the line trespassed upon, and offered no explanation why he so trespassed, except alleging that other persons had been along it; and, looking at the fact of the warning by notice boards at each side of that part of the field so trespassed upon, and also looking at the fact of the appellant persisting in going along after the respondent had told him he had no right to do so, and of the appellant saying he

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CHOULER.

1898.

*Malicious  
injury to  
property—  
Damage to  
grass—  
Walking  
across field—*  
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c. 97, s. 52.



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*Malicious  
injury to  
property—  
Damage to  
grass—  
Walking  
across field—  
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c. 97, s. 52.*

should come back the same way, and should continue to cross that part of the field as often as he liked, they considered that the trespass was a wilful and malicious act, and they were satisfied upon the evidence given as well as upon their own knowledge of what the effect of such a trespass must have been upon grass of that description, and they found as a fact that, as the grass which was long and thick and trespassed on and trodden down for the length of 130 yards or so by the appellant, he must have done and did actual damage to the grass, and that the sum of 6*d.* was a reasonable amount for the damage so done by the appellant.

The justices therefore convicted the appellant of the offence charged of unlawfully, wilfully, and maliciously damaging the grass to the amount of 6*d.*, and they ordered him to pay the nominal penalty of 6*d.*, also 6*d.* for the damage and 14*s.* for costs, and that in default of payment he should be imprisoned and kept to hard labour for seven days.

The question for the opinion of the Court was whether the justices were right upon the point of law raised.

If the Court should be of opinion that the justices had jurisdiction to deal with the offence charged, and that they were right in holding that the trespass and injury complained of was such a wilful and malicious injury as to come within the meaning of sect. 52 of 24 & 25 Vict. c. 97, then the conviction was to stand; otherwise the conviction was to be quashed.

The Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), provides :

Sect. 24. Whosoever shall unlawfully and maliciously destroy, or damage with intent to destroy, any cultivated root or plant used for the food of man or beast . . . and growing in any land, open or inclosed, not being a garden, orchard, or nursery ground, shall, on conviction thereof . . . be imprisoned only, or be imprisoned and kept to hard labour for any term not exceeding one month, or else shall forfeit and pay over and above the amount of the injury done, a sum of money not exceeding twenty shillings.

Sect. 52. Whosoever shall wilfully or maliciously commit any damage, injury, or spoil to or upon any real or personal property whatsoever, either of a public or private nature, for which no punishment is hereinbefore provided, shall, on conviction thereof . . . either be committed to the common gaol or house of correction there to be imprisoned only, or to be imprisoned and kept to hard labour for any term not exceeding two months, or else shall forfeit and pay such sum of money not exceeding five pounds as to the justices shall seem meet, and also such further sum of money as shall appear to the justices to be a reasonable compensation for the damage, injury, or spoil so committed, not exceeding the sum of five pounds.

Sect. 53. The provisions in the last preceding section contained shall extend to any person who shall wilfully or maliciously commit any injury to any tree, sapling, shrub, or underwood, for which no punishment is hereinbefore provided.

*W. H. Stevenson* for the appellant.—The conviction in this case was wrong. The summons was taken out under sect. 52, and the conviction was under that section. The sole question therefore is, whether this conviction under sect. 52 can be sustained upon the facts found in the case. It is not for the appellant to show that the facts did not bring the case within any other section, and the question whether he could or could

not have been convicted under any other section does not arise, as he was not summoned under any other section. Sect. 52 renders liable to the penalties therein imposed—which may include two months' imprisonment with hard labour—any person who “shall wilfully or maliciously commit any damage, injury, or spoil to or upon any real or personal property whatsoever.” To bring the case within the section, the damage must be—in the words of the section—“damage, injury, or spoil to or upon any real or personal property,” and the damage so done must also be done “wilfully or maliciously.” There was no question of personal property in this case, and the sole question is whether there was damage to the realty within the meaning of the section. To bring the case within the section there must be damage—not to any uncultivated product of the realty—but to the realty itself. In *Gardner v. Mansbridge* (57 L. T. Rep. 265; 19 Q. B. Div. 217) it was held by Smith and Wills, JJ., in a considered judgment, that, in order to constitute the offence of wilfully and maliciously committing damage, injury, or spoil, to or upon any real property under sect. 52, there must be proof of actual damage to the realty itself, and mere damage to uncultivated plants or roots growing upon the realty, or to any product of the realty, is insufficient. In that case the respondent gathered mushrooms to the value of 2s., which were growing in a wild or uncultivated state in a field belonging to the appellant, and the mushrooms were of value to the appellant. The respondent otherwise did no damage or injury to the grass or the hedges, and the court there held that the respondent could not be convicted under sect. 52. Smith, J., who delivered the judgment of the Court, points out that the question is, whether the words in the section mean damage to the realty itself, or to the product of the realty which may happen to be growing thereon at the time, and he holds that in this section the Legislature did not consider the damage to things growing upon the realty was damage to the realty itself. That case absolutely applies to and covers the present case; grass is a stronger case than mushrooms. Growing grass is a product growing on the realty as much as and even more than mushrooms are, and mushrooms were held to be a mere product of the realty, and not the realty itself. *Eley v. Lytle* (50 J. P. 308) is to the same effect. There it was held that a person who had merely trespassed on a grass field could not be convicted under this section. In the second place, the damage must be wilful or malicious. The object in the person's mind must be to commit damage; here the object was not damage, but to pass from one point to another. On both grounds the conviction was bad, and ought to be quashed.

The respondent did not appear.

DAY, J.—I am of opinion that the justices were perfectly right in convicting the appellant. They had all the facts before them, and those facts justified them in finding that the appellant had committed the offence within the section of wilfully and mali-

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CHOULER.

1898.

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injury to  
property—  
Damage to  
grass—  
Walking  
across field—  
24 & 25 Vict.  
c. 97, s. 52.

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—  
*Malicious  
injury to  
property—  
Damage to  
grass—  
Walking  
across field—  
24 & 25 Vict.  
c. 97, s. 52.*

ciously doing damage to property. They considered that the trespass was a wilful and malicious act, and they say that they came to that conclusion having regard to the facts that the appellant did not claim any right of way, that he went upon the land at his own risk having knowledge by the notice boards that he had no right to be there, that he chose to trespass on the land and walked a considerable distance through the grass after he had been warned to go off the land; that the grass was long and thick, and the justices were satisfied, as well upon the evidence as from their own local knowledge of the place, that the effect of such a trespass would be to damage the grass, and they found as a fact that the appellant did damage to the grass to the extent of 6d. In my judgment the appellant was quite properly under the statute convicted of the offence charged against him.

LAWRANCE, J.—I agree.

*Appeal dismissed.*

Solicitors for the appellant, *Field, Roscoe, and Co.*, for *Parker Woodward*, Nottingham.

## QUEEN'S BENCH DIVISION.

*Friday, Jan. 21, 1898.*

(Before DAY and LAWRANCE, JJ.)

JONES AND PARRY (apps.) v. DAVIES (resp.). (a)

*Fishery Acts—Salmon—Instrument for catching—Net—Gaffs, wires, snares, or "other like instrument"—Whether net is a "like instrument"—Salmon Fishery Act 1861 (24 & 25 Vict. c. 109), s. 8—Salmon Fishery Act 1873 (36 & 37 Vict. c. 71), s. 18.*

*Sect. 8 of the Salmon Fishery Act 1861—as extended by sect. 18 of the Salmon Fishery Act 1873—provides that no person shall use any spear, gaff . . . wire, snare, or other "like instrument" for catching salmon, or have in his possession such instruments with the intention of catching salmon :*

*Held, that a net—even though it be by reason of the smallness of its meshes an improper and illegal net—is not a "like instrument" to a wire, snare, or any of the other instruments men-*

(a) Reported by W. W. ORR, Esq., Barrister-at-Law.

*tioned in the section, and that a person, therefore, who is found in possession of such a net, with the intention of catching salmon therewith, cannot be convicted under the section.*

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**C**ASE stated by eight of Her Majesty's justices of the peace for the county of Merioneth under the Summary Jurisdiction Acts.

At a petty sessions, held at Dolgelly, in the county of Merioneth, on the 3rd day of August, 1897, an information was preferred by the respondent, as clerk to and on behalf of the Board of Conservators of the Dovey, Mawddach, and Glaslyn salmon fishery district, against the appellants, under sub-sect. 3 of sect. 8 of the Salmon Fishery Act, 1861, and the Acts extending and amending the same, charging that the appellants, on the 13th day of July, 1897, unlawfully had in their possession a certain instrument for catching salmon, to wit, a net, under such circumstances as to satisfy the Court before whom they should be tried that they intended at the time to catch salmon by means thereof.

*Fishery Acts  
—Salmon—  
Instrument  
for catching—  
Net—"Gaffs,  
wires, snares,  
or other like  
instruments"  
—24 & 25  
Vict. c. 109,  
s. 8; 36 & 37  
Vict. c. 71,  
s. 18.*

This information was heard and determined by the justices, and the appellants were convicted of the offence and were adjudged each of them to pay a fine of 20s. and costs.

The following facts were proved or admitted:

On the 13th day of July, 1897, at about one o'clock in the morning, the appellants were seen together by a water bailiff under the board of conservators on a field which abuts on a salmon river within the district of the board.

Adjoining this field there are several pools in the river in which salmon congregate and remain.

The appellants crossed together from the field on to a railway line, which intersects it, and proceeded along the railway to a railway bridge over the river.

While proceeding along the railway to the bridge the appellant Parry was carrying a sack, and the justices found as a fact that this sack then contained the net which was produced at the hearing, and which is hereafter described.

When the appellants got to the railway bridge the water-bailiff and a gamekeeper, who was out watching with him, were already there. The appellants then turned back and ran away, the appellant Parry still carrying the sack. The water-bailiff called on Parry to stop, and gave chase, but the appellant Parry still ran on carrying the sack, while the appellant Jones turned back and approached the bailiff. The bailiff followed after Parry, whom he saw throw the sack containing the net on the ground within the railway fences, where it was picked up by the bailiff, who then went up to the appellant Parry and accused him of salmon poaching.

The appellant Jones offered himself to be searched, but he was not searched, and the sack and net were taken to the police-station, and were produced at the hearing before the justices.

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*Fishery Acts*  
—*Salmon*—  
*Instrument*  
*for catching*—  
*Net*—"Gaffs,  
wires, snares,  
or other like  
instruments"  
—24 & 25  
Vict. c. 109,  
s. 8; 36 & 37  
Vict. c. 71,  
s. 18.

The net measured 25 yards long; the meshes varied in measurement.

A considerable part of the net had meshes measuring less than half an inch from knot to knot, or two inches all round the mesh. Other parts measured about three-quarters of an inch from knot to knot, or about three inches all round the mesh. The greatest measurement did not exceed one-and-a-half inches from knot to knot, or six inches round the mesh.

It was contended on behalf of the appellants that a net was not such an instrument as was contemplated by sect. 8 of the Salmon Fishery Act, 1861, as amended by sect. 18 of the Salmon Fishery Act, 1873, and that therefore, to be in possession of a net under such circumstances as were proved was no offence in law—a net not being mentioned in either of the said two sections—and it was contended that a net was not "a like instrument" to those mentioned in those sections.

The justices found as a fact that the net was a "like instrument" for catching or killing salmon within the meaning of the sections of the Salmon Fishery Acts, 1861 and 1873, and further, that the appellants had in their possession, as charged by the respondent, the net so produced, at a time and place and under such circumstances that the justices were satisfied that they intended at the time to catch salmon by means thereof; and they convicted the appellants.

The questions of law for the opinion of the Court were:

(1) Whether a "net" is such an instrument as is contemplated by sect. 8 of the Salmon Fishery Act, 1861, as extended and amended by sect. 18 of the Salmon Fishery Act, 1873; (2) and, consequently, whether it is an offence within the aforesaid sections of the Acts to be in possession of a net under the circumstances proved before the justices.

The Salmon Fishery Act, 1861 (24 & 25 Vict. c. 109), provides:

Sect. 8. No person shall do the following things or any of them, that is to say: (1) Use any light for the purpose of catching salmon; (2) Use any spear, gaff, strokeshall, snatch, or other like instrument for catching salmon; (3) Have in his possession a light or any of the foregoing instruments under such circumstances as to satisfy the court before whom he is tried that he intended at the time to catch salmon by means thereof: And any person acting in contravention of this section shall incur a penalty not exceeding five pounds, and shall forfeit any instruments used by him or found in his possession in contravention of this section; but this section shall not apply to any person using a gaff as auxiliary to angling with a rod and line.

Sect. 10. No person shall take or attempt to take salmon with any net having a mesh of less dimensions than two inches in extension from knot to knot . . . or eight inches measured round each mesh when wet under a penalty not exceeding five pounds.

The Salmon Fishery Act, 1873 (36 & 37 Vict. c. 71), provides:

Sect. 18. The following sections of the Salmon Fishery Act, 1861, and the Salmon Fishery Act, 1865, shall be respectively amended in the following manner, that is to say: (1) The 8th section of the Salmon Fishery Act, 1861, shall be construed as if the words "otter, lath or jack, wire or snare" were inserted after the word "any," and as if the words "or killing" were inserted after the word "catching" in the 2nd



sub-section, and as if the words "or kill" were inserted after the words "to catch" in the 3rd sub-section.

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*E. Honoratus Lloyd* for the appellants.—The question is whether the fact of the appellants having a net in their possession under the circumstances found in this case brings them within sect. 8 of the Act of 1861, as amended by sect. 18 of the Act of 1873. The sections, when taken together, run thus: A person shall not use any "spear, gaff, strokehall, snatch, otter, lath, jack, wire, snare, or other like instrument" for catching salmon. The justices were wrong in holding that a net came within the words "like instrument" in sect. 8. A net cannot by any interpretation be a "like instrument" within that section. The only thing in that section to which it could be at all similar is a snare, and a net is not a snare. Sect. 5 prohibits certain modes of destroying fish, and sect. 8 absolutely prohibits the use of certain instruments, and these instruments, being absolutely prohibited, cannot include a net, as a net is not absolutely prohibited. Sect. 10 prohibits the taking of salmon with a net having a mesh of less than two inches from knot to knot; the section therefore impliedly authorises the use of a net with a mesh above these dimensions, which shows that nets are not absolutely prohibited, and that they cannot therefore come within the absolutely prohibited things mentioned in sect. 8. Moreover, the respondent has taken the trouble in this case to set out the measurements of the meshes, which would be relevant if the charge had been under sect. 10, but which have no relevance whatever to a charge like the present under sect. 8. Again, when the Act means to refer to and include the word "net," it does so in express terms, as we see by sect. 10 and by sect. 12 (2); and sect. 33 of the Salmon Fishery Act, 1865 (28 & 29 Vict. c. 121), actually provides for licences for fishing for salmon with nets. The Legislature has, therefore, actually legalised the fishing for salmon with nets; but, if the contention of the respondent be correct, then fishing with nets would be absolutely illegal. The justices have found as a fact that a net is a "like instrument" within the section. It is not a question of fact, but a question of law; and the justices cannot, by merely calling it a question of fact, defeat the appellant's right to raise the point as a question of law. If a fisher takes out a rod and line and a gaff, then that would be allowable; but if, instead of a gaff, he takes a net with him, then it would not be allowable if the respondent's contention be right.

*Montague Lush* for the respondent.—The sole question is whether there was any evidence to justify the justices in finding, as they did, that this instrument was a "like instrument" within the section; and, if there be any such evidence, as I submit there is, it is sufficient to support the conviction. There is no other Act, or section of an Act, to hit this case, except sect. 8, and, assuming that the net is a "like instrument" within the section, then the section makes it an offence for a



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person to have the net in his possession under suspicious circumstances, although he stops short of using it. It is enough if he is found in possession of the net. The object of the section is to prevent persons catching salmon, not in the ordinary way with rod and line, but with one of the instruments specified in the sections. In that section a net is *ejusdem generis* with and a like instrument to a snare or wire; it is a means for inclosing or detaining a fish externally. The net which the appellants had in their possession was less in dimensions than two inches from knot to knot, and was, therefore, an absolutely prohibited instrument under sect. 10. Although there is no case which says that a net is a snare, there is the case of *Allen v. Thompson* (22 L. T. Rep. 472; L. Rep. 5 Q. B. 336), in which it was held that a snare came within the words "net or other engine or instrument for the purpose of killing game," in the Game Act, 1831 (1 & 2 Will. 4, c. 32). The present is a converse case, and I submit that a net such as this, with an improper and illegal mesh, was clearly a prohibited instrument, and, being so, it was competent for the justices to find as a fact—and there was evidence to support such a finding—that this net was an instrument of like description with those mentioned in sect. 8, as amended by sect. 18 of the later Act.

DAY, J.—I am clearly of opinion that this conviction ought to be set aside. The justices convicted the appellants under sect. 8 for being in possession of this net, as they considered that the net was, within the meaning of that section, a "like instrument, that is, an instrument like the instruments mentioned in the section. It is now said that a net is a like instrument to a snare or a wire. I cannot come to that conclusion. One of the appellants had in his possession a net, a thing which was a net in every sense of the word, but a net is an entirely different thing from a snare, and is not *ejusdem generis* with it; and a snare is entirely different from a net. The two things are perfectly distinct. I think, therefore, that the decision of the justices was entirely wrong and must be reversed.

LAWRANCE, J.—I am of the same opinion. It seems to me to be absolutely clear beyond all doubt that the intention of the Legislature in these Acts was to distinguish between legal and illegal modes of taking salmon and to suppress the illegal modes. There are only two legal and recognised modes of taking salmon, namely, by a rod and line and by a net, and these modes are recognised in the Act. Sects. 5 to 13 deal with the illegal modes of taking the fish. Sect. 5 prohibits the taking of them by means of the poisoning of the water. Then sect. 8, as amended by sect. 18 of the Act of 1873, prohibits the use of gaffs, spears, wires, and snares, and such like instruments, and sect. 9 prohibits the using as a bait any fish roe; and then we come to sect. 10, which prohibits the taking of salmon by nets with meshes under a certain size, but which does not prohibit the taking of them by nets with meshes of a larger size.

If this net was an illegal net, that is, one prohibited by sect. 10, then the charge ought to have been under that section, and not under sect. 8. The distinction between sects. 8 and 10 is as clear as it possibly can be. Under sect. 8 a person is guilty of an offence within the section if he has any of the prohibited instruments in his possession under suspicious circumstances; but when we come to sect. 10 there is no such provision that the being in possession of a net—even of a net which is prohibited under that section—is illegal. If the Legislature had intended to make the mere possession of the net illegal, they would have said so, but they have not done so. They have confined themselves to declaring illegal spears, gaffs, and such like things. No one can suppose that such a thing as a net was intended to come within sect. 8. To bring a net within the prohibition of the statute a person must be taking or attempting to take salmon with a net which is an improper and illegal net within sect. 10. That is not so in this case, and therefore this conviction must be quashed.

*Appeal allowed. Conviction quashed.*

Solicitors for the appellants, *Gibson, Weldon, and Bilborough*, for *R. Guthrie Jones, Dolgelly*.

Solicitor for the respondent, *T. Davies Jones*, for *W. R. Davies, Dolgelly*.

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## QUEEN'S BENCH DIVISION.

*Nov. 19, 1897, and Jan. 22, 1898.*

(Before KENNEDY, J.)

MARKS v. FROGLEY AND OTHERS. (a)

*Assault—Arrest for larceny—Volunteer—Military law—Action for assault and false imprisonment—Army Act, 1881 (44 & 45 Vict. c. 58), s. 176.*

*By sect. 176 of the Army Act, 1881, "the persons in this section mentioned are persons subject to military law as soldiers . . . that is to say, (8) all non-commissioned officers and men belonging to the volunteer forces of the United Kingdom (a) when they are being trained or exercised with any portion of the regular forces or with any portion of the militia when subject to military law.*

*The plaintiff and the defendants were members of a volunteer corps who were in training at Shorncliffe with a portion of the*

(a) Reported by W. DE B. HERBERT, Esq., Barrister-at-Law.

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regular forces. As the camp was being broken up the plaintiff was accused of stealing certain articles. The captain in command at Shorncliffe ordered that the plaintiff should be conducted under escort to Boxmoor, where the volunteers were dismissed, and then that he should be handed over to the civil authorities at Hemel Hempstead. These orders were carried out, and at that place he was handed over to the defendant Frogley who was superintendent of the police. The plaintiff was tried and acquitted, and in an action for assault and false imprisonment the jury returned a verdict for Frogley. Against the other three defendants, who were the sergeant and two privates, who formed the escort, there was a verdict for 300l.

*Held*, that, although up to the departure from Shorncliffe they were under military law, and so would not be responsible for detaining the plaintiff, yet on the departure from the station they became ordinary civilians, and so were liable. And further, that, although the plaintiff might have been arrested and tried by court-martial, or handed over to the civil authorities at Shorncliffe, the actual proceedings were unauthorised. (a)

THIS was an action tried before Kennedy, J. and a special jury.

The material facts appear from the judgment.

*A. J. Tassell* and *Theo. Matthew* for the plaintiff.

*Danckwerts* for the defendant Frogley.

*Lawson Walton*, Q.C. and *R. D. Muir* for the other defendants.

*Jan. 22.*—KENNEDY, J.—The plaintiff in this action, who was a member of a Bedfordshire Volunteer Corps, has obtained in an action for assault and false imprisonment which was tried before me, sitting with a special jury, a finding of the jury of 300l. damages against three defendants—Arthur Cooper, who is a sergeant, and Thomas Lovelock and George Albert Short, who are privates in the same corps as that to which the plaintiff belongs. A fourth defendant in the action, Frederic Frogley, who is a superintendent of the Herts County Police, has had, upon the findings of the jury, a judgment in his favour, and no question arises as to his case. The points affecting the three first-named defendants are of a somewhat peculiar nature. The facts relevant to the decision of these points are as follows: The plaintiff and the three defendants, with other members of the corps, were in August last in military training with a portion of the regular forces at Shorncliffe. The camp was broken up on the morning of the 8th day of August. Early on that morning, and whilst the preparations for the return of the volunteers to their respective homes were proceeding in the camp, a disturbance took place in and around the tent in which the plaintiff and others had been lodged in consequence of some of the plaintiff's comrades accusing him of having stolen and hidden in his kit

(a) This decision has since been reversed, see *post* and 78 L. T. Rep. N. S. 607, also (1898) 1 Q. B. 888.

bag a number of articles which belonged to them. Captain Foot, the adjutant of the corps, having been informed of the disturbance, came to the spot, and ultimately (to omit details on which there was some conflict in the evidence) ordered Sergeant Killeen to form an escort and take the plaintiff to the guard tent where he would find Lieutenant Roberts on the point of proceeding with the baggage and its escort to Shorncliffe railway station. Sergeant Killeen was to direct Lieutenant Roberts to take the plaintiff with the baggage guard to the railway station and there keep him until the D. (plaintiff's) company arrived. By the further orders of Captain Foot, conveyed through Sergeant Killeen, the plaintiff, after his arrival at the railway station, was to be taken in military custody in the special military train which was then about to start for the conveyance of volunteers to Watford, Boxmoor, and other stations of the district to which the plaintiff and other members of his volunteer corps belonged; and on his arrival at Boxmoor (the railway station, about two miles distant from Hemel Hempstead, where the plaintiff lived), the plaintiff was to be taken by his escort to the police-station at Hemel Hempstead, and then handed over to the civil authority. Captain Foot at the same time directed that information as to what had happened should be given at Hemel Hempstead to Captain Smeaton, the officer in command of the plaintiff's company. These orders were carried out. After the plaintiff had reached Shorncliffe station with the baggage guard under Lieutenant Roberts, and the train was ready to receive her passengers, the defendant Cooper selected, in the usual way from the ranks of the volunteers who were drawn up in the railway station, his two co-defendants Lovelock and Short to form the prisoner's escort on the journey to Boxmoor and Hemel Hempstead. The plaintiff was then placed in a compartment with these defendants, and the four so travelled together in the train to Boxmoor, a journey of some three and a half hours. On the arrival of the train at Boxmoor the prisoner, under the charge of his escort, was directed by the defendant Cooper to remain in a waiting-room, while the rest of the volunteers, other than certain persons who would be required as witnesses in the prisoner's case, were formally dismissed. The defendant Cooper directed Corporal Young to keep these witnesses together, and, with them to follow prisoner's escort to the police-station at Hemel Hempstead. The defendants then marched with the plaintiff, who was placed between the two privates, to the police-station, and there charged before the defendant Frogley with the offence of larceny. After inquiry, and after hearing the evidence of some witnesses, the defendant Frogley took the plaintiff into custody. As there is now no question affecting this defendant, it is unnecessary further to pursue the history of the case, except to say, in justice to the plaintiff, that when put on his trial, as he was, at the Quarter Sessions at Canterbury, he was honourably acquitted of the

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charges made against him. Upon these facts the plaintiff's case against these three defendants, Cooper, Lovelock and Short, is a case of assault and false imprisonment based upon the treatment to which they subjected him by keeping him in detention as above stated from the time when they took him in charge at Shorncliffe Station to the time when they gave him in charge at Hemel Hempstead. It would be foreign to my present purpose to refer to the circumstances alleged on the one side or the other by way of aggravation or mitigation in regard to damages. It was not pleaded or contended on behalf of the defendants in answer to the plaintiff's claim that a felony had been committed. Therefore, if the matter had been one touching ordinary civilians the action was, except as to damages, an undefended one. The defendants, however, contended that this was not a case touching ordinary civilians, but a case in which they, and the plaintiff also, ought to be treated as persons under military law, that the order of Captain Foot was, under that law, justifiable, that even if it was in any respect illegal, it was not obviously illegal, and that, as they simply obeyed an order which they were bound to obey, they were in no case responsible. These being, as regards these defendants, the only contentions of law, and the facts upon which they were based not being in dispute, the only question I had to ask the jury in regard to these defendants was as to the amount of damages to be awarded to the plaintiff in the event of the defences in point of law being held to be bad. The jury assessed these damages at 300*l*. I have now to decide whether the defendants are entitled to succeed upon any of the points of law which they have put forward. I have come to the conclusion that they are not. In the first place, at the time of the acts of which the plaintiff complains, that is, during the conveyance of the plaintiff in custody from Shorncliffe to Boxmore Railway Station and thence to Hemel Hempstead police-station—I do not think that either the plaintiff or the defendants were subject to military law. The matter depends upon the provisions of the Army Act, 1881. The most important of these is sect. 176. That section commences by enacting:—"The persons mentioned are persons subject to military law as soldiers, and this Act shall apply accordingly to all the persons so specified." The statute then enumerates in several sub-sections, which have no bearing upon the present case, various classes of persons; and in sub-sect. 8 it proceeds to include all non-commissioned officers and men belonging to the Volunteer forces of the United Kingdom, (a) when they are being trained or exercised with any portion of the regular forces or with any portion of the militia when subject to military law. Now, there is no question that whilst in the camp at Shorncliffe, and, in my view, until the despatch of the prisoner, in fact (although he stated that he was unaware of it) from Shorncliffe railway station, both plaintiff and defendants were Volunteers who were being trained and exercised with a portion of



the regular forces, and were therefore, according to this enactment, persons subject to military law. Captain Foot in his evidence deposed to his opinion—and this is the contention of the defendants' counsel—that the “training or exercise” mentioned in the section ought to be held to continue in regard to each volunteer after the camp was broken up by the departure of the volunteers, and until the moment of his formal dismissal at his home destination, which, in the case of the Hemel Hempstead party, would be such a point either at Boxmoor station or after leaving Boxmoor station as the officer in command of the party might desire for the dismissal of the men. Indeed, I understood Captain Foot to go so far as to say that, in his opinion, if one of these volunteers had stolen a sheep on his way home between Boxmoor and Hemel Hempstead he could have been tried by court-martial for the offence. I cannot so construe the statute. The words in question appear to me to have a plain and sensible meaning, and to confine the subjection of the volunteer to military law within the period of his being trained and exercised with any portion of the regular forces or of the militia when subject to military law. The interpretation of Captain Foot and the defendants' counsel would add to the sub-section the words “and whenever they are proceeding to or from such training or exercise.” I hold that, upon the departure of the plaintiff and defendants from the camp they ceased to be subject to military law; their status ceased to be that of soldiers and became that of civilians, subject only as to discipline to the provisions of the Volunteer Act, 1863, and subsequent statutes relating to volunteers, under none of which could the defendants justify their treatment of the plaintiff. It is, however, contended for the defendants that, even if this be the true view, and they and the plaintiff ceased to be subject to military law after leaving the camp at Shorncliffe, they are entitled to immunity by the combined effect of sects. 41, 45, and 158 of the Army Act. I think this defence fails also. There is no doubt that the charge of larceny committed during his training with the regulars in the camp was an offence for which he might have been tried by court-martial under sect. 41; there is no doubt that his arrest by order of Captain Foot when that charge was preferred against him was perfectly proper and legal under sect. 45; and I am inclined to think that, if after his arrest it had been judged better that instead of being tried by court-martial the plaintiff should be handed over to the local police with the view of his being tried by the civil court, the arrest might properly have been continued, provided due diligence was used, until he was so handed over. I understood the plaintiff's counsel to be willing to concede so much. But Captain Foot did not adopt this course. He adopted the course he did with, no doubt, the best intentions, believing it to be both lawful and expedient, and in order to prevent the inconvenience which might arise from delaying (as the holding of a court-martial or the sending of the

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parties concerned to Hythe police-station would delay) the breaking up of the camp and the departure of the plaintiff and the witnesses for their homes by the special train which had been ordered for their conveyance from Shorncliffe. But the course which he preferred was one for which I can find no justification in any section of the Army Act. The provision of sect. 158 (1), upon which reliance was placed for the defendants, appears to me not to afford any justification, for more than one reason. In the first place, its sanction for taking into and keeping in military custody, and for trying and punishing a person who has been, but has ceased to be, subject to military law, is by the opening words of the sub-section confined to cases in which "an offence under this Act has been committed" by that person. Here, *ex concessis*, Marks had, in fact, committed no offence. One might, perhaps, I agree, have expected that the sanction would have extended to the case of an offence under the Act being alleged to have been committed; but the words as they stand seem plain enough. Even, however, if the words could be interpreted as they must be interpreted in order to avail the defendants, I can find in this section no justification for that which the defendants did under Captain Foot's order when, after they and he had ceased to be subject to military law, they kept the plaintiff as a prisoner during a long railway journey and a two-mile march, not in order that he might be tried by court-martial, but in order that he might be handed over to the police authority, not at the place of the alleged offence, but in a different county from that in which it was alleged that the offence had been committed. I doubt whether, even if the plaintiff and the defendants continued, as Captain Foot thought they did, to be subject to military law, a detention of this kind and for this purpose could be treated as a proper exercise of the powers of military custody given by sect. 45 of the Army Act. The last point taken for the defendants was that, even if the order which they obeyed was unjustifiable or illegal, still it was not obviously unjustifiable or illegal, and the defendants, who were, at the time when it was given by Captain Foot, subject to military law, and bound to obey his order, having simply done what he ordered, ought not to be held liable for what they did. The principles of law applicable to a case such as the present I take as they are stated by Willes, J. in his judgment in *Keighley v. Bell* (4 F. & F. at pp. 790, 805), and in *Dawkins v. Lord Rokeby* (Ib., p. 831). In accordance with those principles, as I understand them, I should hold this to be a good plea for the defendants if I were of opinion that they and the plaintiff continued subject to military law during the time of the doing of the acts by the defendants of which the plaintiff complains. Even if the order was in excess of the powers as to military custody, given by sect. 45, it would be an excess which, in my view, would not be obvious to persons in the position of the defendants. I am, however, for the reasons which I have already

stated, of opinion that, at the time of the acts complained of neither the plaintiff nor the defendants were subject to military law, and, in accordance with the law as laid down by Willes, J. in the cases to which I have referred, I must decide that this defence also fails. I give judgment for the plaintiff for the amount of the damages fixed by the jury.

*Judgment accordingly. (a)*

Solicitor for the plaintiff, *H. W. L. B. Lathom.*

Solicitors for the defendants, *J. N. Mason and Co., for Sworder and Longmore, Hertford.*

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## CROWN CASES RESERVED.

*Saturday, Feb. 5, 1898.*

(Before Lord RUSSELL, C.J., HAWKINS, MATHEW, LAWRENCE, and WRIGHT, JJ.)

REG. v. ROSE. (b)

*Evidence—Admissibility—Confession—Inducement to confess—  
Duty of prosecuting counsel and solicitor—Bail.*

*A confession made in consequence of an inducement held out by a person in authority is not admissible evidence. A statement made by an accused person after he has been told that it will be better for him to speak the truth, cannot be admitted as evidence against him.*

*Semble, it is the duty of prosecuting counsel and solicitors having the charge of prosecutions to satisfy themselves before putting in evidence a confession, that it was not made under such circumstances as to be inadmissible.*

*Semble, bail is not to be withheld unless it is otherwise impossible to ensure the prisoner's attendance at the trial.*

CASE stated by the chairman of the Norfolk Quarter Sessions.

The prisoner was indicted for larceny of certain corn, chaff, sheep, poultry, and grass seeds, the property of his master, one Corney. It was stated in the case that Corney, in the presence of a police constable, had asked the prisoner how he accounted for the number of the sheep on the farm being less than it should

(a) See note ante, p. 712

(b) Reported by A. A. BETHUNE, Esq., Barrister-at-Law.

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be, and the prisoner then admitted that he had sold a lamb and an ewe to certain persons. In giving his evidence Corney stated that the prisoner, after making the statement as to the sheep, had, in answer to questions, stated that he had also disposed of certain quantities of corn and chaff. On cross-examination the prosecutor admitted that he might have said to the prisoner, "You had better tell me about all the corn that is gone." Robert Corney, a nephew of the prosecutor, being called, subsequently stated that the prosecutor had asked the prisoner to speak the truth, saying that "it would be better" for the prisoner to do so. Counsel for the prisoner submitted that these statements of the prisoner as to the corn had been made on his inducement to confess, and were therefore not admissible as evidence against him, but the Court allowed the whole case to go to the jury, who convicted the prisoner on the whole indictment.

*E. E. Wild* for the prisoner.—The prosecutor induced the prisoner to confess by telling him that it would be better for him to speak the truth. A confession made in consequence of such an inducement is not admissible evidence; the jury should have been told to disregard it, or evidence of the confession having been given, and being subsequently found to be inadmissible, the jury should have been discharged, and the case tried by a fresh jury. Neither of these courses having been adopted the conviction was bad, and should be quashed.

Lord RUSSELL, C.J.—In my opinion this conviction cannot be allowed to stand. The prisoner, who had been employed by a farmer in a more or less confidential capacity, was charged with stealing a variety of articles the property of his master, amongst other things sheep and corn, and was tried at the Norfolk Quarter Sessions in January. It appears that the prosecutor, having reason to suspect that some of his property had been improperly dealt with, spoke to the prisoner, who then, as to some of the articles, confessed, and confessed voluntarily; but, after making this confession, he was pressed to make a full confession, and to confess to having taken the corn. That is clear from the evidence of the prosecutor's nephew, who said that his uncle had asked Rose to speak the truth, telling him that it would be better for him if he did. This amounts to evidence that the confession was not voluntary within the meaning of the authorities. A question of some delicacy then arises as to the course which the magistrates ought to have adopted. It is clear that the evidence ought not to be admitted; but ought the Court merely to tell the jury to disregard it, or ought the Court to discharge the jury and try the case again? In this case, however, the whole of the evidence was allowed to go to the jury, who found a general verdict. The rule, which is very old, and is stated just as clearly in the old as in the modern authorities, will be found in *East's Pleas of the Crown*, vol. 2, at p. 657. Lord Campbell, in *Reg. v. Baldry* (19 L. T. Rep. O. S. 146; 21 L. J. 130, M. C.), admitted a confession made by a prisoner after he had been cautioned by

a policeman, because, as is correctly stated in the head-note to the case, "the observation of the policeman did not amount to any promise or threat to induce the prisoner to confess so as to render a confession which the latter made after it inadmissible." In *Reg. v. Jarvis* (17 L. T. Rep. 178; L. Rep. 1 Cr. Cas. Res. 96; 10 Cox C. C. 574) the prisoner's master said to him, "You are in the presence of two officers of the police, and I should advise you that to any question that may be put to you you will answer truthfully, so that, if you have committed a fault, you may not add to it by stating what is untrue"; whereupon the prisoner made a confession which the Court held to be admissible, Willes, J. saying that the case would have been different if the master had said, "It is better for you to tell the truth." The principle is also laid down by Cave, J. in *Reg. v. Thompson* (69 L. T. Rep. 24; (1893) 2 Q. B. 12; 17 Cox C. C. at p. 645), with the concurrence of the late Lord Chief Justice, that a confession is not admissible if it is preceded by an inducement held out by a person in authority. Seeing, then, that in the case before us there were used the very words which it has been held render a confession inadmissible, in my opinion this confession was not admissible, and that it having been admitted the conviction which followed it was bad. It is to be borne in mind not only by magistrates but by prosecuting counsel and by solicitors having the charge of prosecutions, that they must satisfy themselves before putting a confession in evidence that the confession was not obtained under such circumstances as to be inadmissible. I observe that in this case bail was refused for the prisoner. It cannot be too strongly impressed on the magistracy of the country that bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at the trial.

HAWKINS, MATHEW, LAWRENCE, and WRIGHT, JJ., concurred.

Solicitor, *W. A. Watts*, St. Ives, Hunts.

The Crown did not appear.

REG.

v.

ROSE.

1898.

Practice—

Evidence—

Admissibility

—Confession

—Inducement

Duty of

prosecution

—Bail.



# APPENDIX.

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## STATUTES AND PARTS OF STATUTES AFFECTING THE CRIMINAL LAW, PASSED IN THE SESSION OF PARLIAMENT OF 1895.

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### SHOP HOURS ACT, 1895.

58 VICT. CAP. 5.

*An Act to amend the Shop Hours Act, 1892.*—[9th April, 1895.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows :

1. If any employer fails to keep exhibited the notice required by section four of the Shop Hours Act, 1882, in manner required by that section, he shall be liable to a fine not exceeding forty shillings. Penalty on failure to comply with 55 & 56 Vict. c. 62, s. 4.
2. This Act may be cited as "The Shop Hours Act, 1895," and shall be construed as part of the Shop Hours Act, 1892, and the Shop Hours Acts, 1892 and 1893, and this Act may be cited collectively as "The Shop Hours Acts, 1892 to 1895." Short title and construction.

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### REFORMATORY AND INDUSTRIAL SCHOOLS (CHANNEL ISLANDS CHILDREN) ACT, 1895.

58 & 59 VICT. CAP. 7.

*An Act for enabling children to be sent from the Channel Islands to Reformatory or Industrial Schools in Great Britain.*—[20th June, 1895.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled and by the authority of the same, as follows :

1. Where, under any law of any of the Channel Islands, it is lawful for any Court in the Channel Islands to sentence a young person to be sent to a reformatory or industrial school in Great Britain, and provision is made under any such law to the satisfaction of a Secretary of State. Power for Government at Channel Islands to contract with reformatory or industrial schools in Great Britain.
- (1.) For the expenses of the conveyance of the person to the school to which he is sent, and for his re-conveyance to the Channel Islands on his discharge from the school ; and



58 & 59 VICT.  
c. 17.

*Reformatory  
and Industrial  
Schools  
(Channel  
Islands Chil-  
dren) Act,  
1895.*

for reception  
of Channel  
Islands chil-  
dren.

Channel  
Islands chil-  
dren may be  
sent to refor-  
matory or  
industrial  
schools in  
Great Britain.  
Construction.

Short title.

- (2.) for the expenses of his maintenance at the school ; and  
(3.) for the contribution (if any) to be made by his parent, step-parent, guardian, or other person liable to maintain him, and the mode in which that contribution is to be raised ;

the government of any of the Channel Islands may contract with the managers of any reformatory or industrial school in Great Britain for the reception of young persons sentenced to be sent to any school by a court in the Channel Islands.

2. A young person sentenced as aforesaid in the Channel Islands to be sent to a reformatory or industrial school in Great Britain may be conveyed in the custody of any constable or other person acting under a warrant issued by any competent court in the Channel Islands to the school to which he is sentenced to be sent, and he shall, during his conveyance to that school, be deemed to be in legal custody, both on sea and on land, and when delivered up to the managers of the school to which he is sent, he may thenceforth be dealt with in the same manner, and be subject to the Acts relating to reformatory and industrial schools, in the same way as if he had been sent to the school by justices, a magistrate, or a court in the United Kingdom.

3. In the construction of this Act for the purpose of the Acts relating to reformatory and industrial schools—

The expression “ young person ” shall include “ youthful offender ” and “ child.”

The expressions “ sentence ” and “ sentenced ” shall include “ order ” and “ ordered.”

4. This Act may be cited as “ The Reformatory and Industrial Schools (Channel Islands Children) Act, 1895.”

## FALSE ALARMS OF FIRE ACT, 1895.

58 & 59 VICT. CAP. 28.

*An Act to prohibit the giving False Alarms of Fires.*—[6th July, 1895.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same as follows :

False alarms  
of fire.

1. Any person knowingly giving or causing to be given a false alarm of fire to the fire brigade of any town or parish outside the metropolitan area or to any officer thereof, whether by means of a street fire alarm, statement, message, or otherwise, shall be deemed to be guilty of an offence punishable on summary conviction, and shall, on conviction for such offence by a court of summary jurisdiction, be liable for every such offence to a penalty not exceeding twenty pounds.

Evidence on  
behalf of  
accused.

2. In any proceeding against any person for an offence under section one of this Act such person shall be competent but not compellable to give evidence, and the wife of such person may be required to attend to give evidence as an ordinary witness in the case, and shall be competent but not compellable to give evidence.

Application of  
the Act to  
Scotland—  
55 & 56 Vict.  
c. 55.

3. The provisions of this Act relative to giving a false alarm of fire by means of a street fire alarm shall not apply to any burgh or police burgh in Scotland in which a person who wantonly rings a fire alarm is liable to

a penalty under the provisions of the Burgh Police (Scotland) Act, 1892 58 & 59 VICT. c. 28.  
or of any local Police Act.

4. This Act may be cited as "The False Alarms of Fire Act, 1895."

5. This Act shall come into operation on the first day of August, one thousand eight hundred and ninety-five.

*False Alarms  
of Fire Act,  
1895.*

Short title.  
Commence-  
ment of Act.

## EXTRADITION ACT, 1895.

58 & 59 VICT. CAP. 33.

*An Act to amend the Extradition Acts, 1870 and 1873, so far as respects the Magistrate by whom and the place in which the case may be heard and the Criminal held in Custody.—[6th July, 1895.]*

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1.—(1.) Where a fugitive criminal has been apprehended in pursuance of a warrant under section eight of the Extradition Act, 1870, and a Secretary of State on representation made by or on behalf of the criminal is of opinion that his removal for the purpose of his case being heard at Bow-street will be dangerous to his life or prejudicial to his health, the Secretary of State, if it appears to him consistent with the Order in Council under the Extradition Act, 1870, applicable to the case, may in his discretion by order, stating the reasons for such opinion, direct the case to be heard before such magistrate as is named in the order, and at the place in the United Kingdom at which the criminal was apprehended, or for the time being is.

Hearing case  
elsewhere than  
at Bow-street  
—83 & 84  
—Vict. c. 52—  
83 & 84 Vict.  
c. 52—36 & 37  
Vict. c. 60.

(2.) The magistrate may be, if the place is in England, a metropolitan police magistrate or a stipendiary magistrate, and if it is in Scotland, a sheriff or a sheriff-substitute, and if it is in Ireland, any stipendiary magistrate, and the magistrate hearing the case in pursuance of the order shall for that purpose be deemed to be a police magistrate within the meaning of the Extradition Act, 1870, and also shall have the same jurisdiction, duties, and powers, as near as may be, and may commit to the same prison as if he were a magistrate for the county, borough, or place in which the hearing takes place.

(3.) Provided that, when the fugitive criminal is committed to prison to await his surrender, the committing magistrate, if of opinion that it will be dangerous to the life or prejudicial to the health of the prisoner to remove him to prison, may order him to be held in custody at the place in which he for the time being is, or any other place named in the order to which the magistrate thinks he can be removed without danger to his life or prejudice to his health, and while so held he shall be deemed to be in legal custody, and the Extradition Acts, 1870 and 1873, shall apply to him as if he were in the prison to which he is committed, and the forms of warrant used under the said Acts may be varied accordingly.

2. This Act may be cited as "The Extradition Act, 1895," and shall be construed together with the Extradition Acts, 1870 and 1873; and those Acts and this Act may be cited collectively as "The Extradition Acts, 1870 to 1895."

Short title and  
construction.

## FACTORY AND WORKSHOP ACT, 1895.

58 &amp; 59 VICT. CAP. 37.

*An Act to amend and extend the Law relating to Factories and Workshops.—[6th July, 1895.]*

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows :

## GENERAL LAW RELATING TO FACTORIES AND WORKSHOPS.

*Sanitary Provisions and Safety.*

Overcrowding  
of factory or  
workshop.

1.—(1.) A factory shall for the purpose of section three of the principal Act, and a workshop shall for the purpose of the law relating to public health, be deemed to be so overcrowded as to be dangerous or injurious to the health of the persons employed therein, if the number of cubic feet of space in any room therein bears to the number of persons employed at once in the room a proportion of less than two hundred and fifty, or, during any period of overtime, four hundred, cubic feet of space to every person.

(2.) Provided that the Secretary of State may, by order made in accordance with section sixty-five of the principal Act, modify this proportion for any period during which artificial light other than electric light is employed for illuminating purposes, and may by like order, as regards any particular manufacturing process or handicraft, substitute for the said figures of two hundred and fifty and four hundred respectively any higher figures, and thereupon this section shall have effect as modified by the order.

(3.) Section seventy-eight of the principal Act shall be read as if there were included among the notices required by that section to be affixed a notice specifying the number of persons who may be employed in each room of the factory or workshop by virtue of this section.

Power to make  
order as to  
dangerous  
factory or  
workshop.

2.—(1) A court of summary jurisdiction may, on complaint by an inspector, and on being satisfied that any place used as a factory or workshop or as part of a factory or workshop is in such a condition that any manufacturing process or handicraft carried on therein cannot be so carried on without danger to health or to life or limb, by order, prohibit the place from being used for the purpose of that process or handicraft, until such works have been executed as are in the opinion of the court necessary to remove the danger.

(2.) Provided that proceedings shall not be taken under this section in cases where proceedings might be taken by or at the instance of any sanitary authority under the provisions of the law relating to public health, unless the inspector is authorised to take proceedings in pursuance of section one or section two of the Act of 1891.

(3.) If there is any contravention of an order under this section the occupier of the place shall be liable to a fine not exceeding forty shillings a day during such contravention.

Provision as  
to notice to  
sanitary  
authority.

3.—(1.) Where notice of an act, neglect, or default is given by an inspector under section four of the principal Act to a sanitary authority, it shall be the duty of the sanitary authority to inform the inspector of the proceedings taken in consequence of the notice.

(2.) In section 2 of the Act of 1891, for the words "within a reasonable time" shall be substituted the words "within one month." 58 & 59 Vict. c. 87.

4.—(1.) A court of summary jurisdiction may, on complaint by an inspector, and on being satisfied that any machine used in a factory or workshop is in such a condition that it cannot be used without danger to life or limb, by order prohibit the machine from being used, or, if it is capable of repair or alteration, from being used until it is duly repaired or altered. *Factory and Workshop Act, 1895.*

Power to make order as to dangerous machine.

(2.) Where a complaint has been made under this section the court or a justice may, on application *ex parte* by the inspector, and on receiving evidence that the use of such machine involves imminent danger to life, make an interim order prohibiting either absolutely or subject to conditions the use of the machine until the earliest opportunity for hearing and determining the complaint.

(3.) If there is any contravention of an order under this section, the person entitled to control the use of the machine shall be liable to a fine not exceeding forty shillings a day during such contravention.

5.—(1.) If an inspector gives notice in writing to the occupier of a factory or workshop, or to any contractor employed by any such occupier that any place in which work is carried on for the purpose of or in connection with the business of the factory or workshop is injurious or dangerous to the health of the persons employed therein, then, if the occupier or contractor after the expiration of one month from the receipt of the notice gives out work to be done in that place, and the place is found by the court having cognisance of the case to be so injurious or dangerous, he shall be liable on summary conviction to a fine not exceeding ten pounds. *Penalty for employment of persons in places injurious to health.*

(2.) This section shall apply in the case of the occupier of any place from which any work is given out as if that place were a workshop.

(3.) Provided that this section shall not apply except in the case of persons employed in such classes of work, and in the case of persons giving out employment and employed within such areas, as may from time to time be specified by the Secretary of State by order made in accordance with section sixty-five of the principal Act, and no such order shall be made except with respect to an area where, by reason of the number and distribution of the population or the conditions under which work is carried on, there are special risks of injury or danger to the health of the persons employed and of the district.

6. If any occupier of a factory or workshop or laundry or of any place from which any work is given out, or any contractor employed by any such occupier, causes or allows wearing apparel to be made, cleaned, or repaired in any dwelling-house or building occupied therewith, whilst any inmate of the dwelling-house is suffering from scarlet fever or small-pox, then, unless he proves that he was not aware of the existence of the illness in the dwelling-house, and could not reasonably have been expected to become aware of it, he shall be liable to a fine not exceeding ten pounds. *Penalty for allowing wearing apparel to be made in place where there is infectious disease.*

7.—(1.) In paragraph (1) of section five of the principal Act for the words "a steam engine and water-wheel" shall be substituted the words "any water-wheel and engine worked by any such power." *Amendment of 41 & 42 Vict. c. 16,*

(2.) In paragraph (3) of the same section after the word "employed," the words "or working" shall be inserted. *s. 5, as to fencing.*

(3.) In paragraph (4) of the same section for the words "for the purpose of any manufacturing process" shall be substituted the words,

## FACTORY AND WORKSHOP ACT, 1895.

58 &amp; 59 VICT. CAP. 37.

*An Act to amend and extend the Law relating to Factories and Workshops.*—[6th July, 1895.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows :

## GENERAL LAW RELATING TO FACTORIES AND WORKSHOPS.

*Sanitary Provisions and Safety.*

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of factory or  
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1.—(1.) A factory shall for the purpose of section three of the principal Act, and a workshop shall for the purpose of the law relating to public health, be deemed to be so overcrowded as to be dangerous or injurious to the health of the persons employed therein, if the number of cubic feet of space in any room therein bears to the number of persons employed at once in the room a proportion of less than two hundred and fifty, or, during any period of overtime, four hundred, cubic feet of space to every person.

(2.) Provided that the Secretary of State may, by order made in accordance with section sixty-five of the principal Act, modify this proportion for any period during which artificial light other than electric light is employed for illuminating purposes, and may by like order, as regards any particular manufacturing process or handicraft, substitute for the said figures of two hundred and fifty and four hundred respectively any higher figures, and thereupon this section shall have effect as modified by the order.

(3.) Section seventy-eight of the principal Act shall be read as if there were included among the notices required by that section to be affixed a notice specifying the number of persons who may be employed in each room of the factory or workshop by virtue of this section.

Power to make  
order as to  
dangerous  
factory or  
workshop.

2.—(1) A court of summary jurisdiction may, on complaint by an inspector, and on being satisfied that any place used as a factory or workshop or as part of a factory or workshop is in such a condition that any manufacturing process or handicraft carried on therein cannot be so carried on without danger to health or to life or limb, by order, prohibit the place from being used for the purpose of that process or handicraft, until such works have been executed as are in the opinion of the court necessary to remove the danger.

(2.) Provided that proceedings shall not be taken under this section in cases where proceedings might be taken by or at the instance of any sanitary authority under the provisions of the law relating to public health, unless the inspector is authorised to take proceedings in pursuance of section one or section two of the Act of 1891.

(3.) If there is any contravention of an order under this section the occupier of the place shall be liable to a fine not exceeding forty shillings a day during such contravention.

Provision as  
to notice to  
sanitary  
authority.

3.—(1.) Where notice of an act, neglect, or default is given by an inspector under section four of the principal Act to a sanitary authority, it shall be the duty of the sanitary authority to inform the inspector of the proceedings taken in consequence of the notice.



(2.) In section 2 of the Act of 1891, for the words "within a reasonable time" shall be substituted the words "within one month." 58 & 59 Vict. c. 37.

4.—(1.) A court of summary jurisdiction may, on complaint by an inspector, and on being satisfied that any machine used in a factory or workshop is in such a condition that it cannot be used without danger to life or limb, by order prohibit the machine from being used, or, if it is capable of repair or alteration, from being used until it is duly repaired or altered. *Factory and Workshop Act, 1895.*

Power to make order as to dangerous machine.

(2.) Where a complaint has been made under this section the court or a justice may, on application *ex parte* by the inspector, and on receiving evidence that the use of such machine involves imminent danger to life, make an interim order prohibiting either absolutely or subject to conditions the use of the machine until the earliest opportunity for hearing and determining the complaint.

(3.) If there is any contravention of an order under this section, the person entitled to control the use of the machine shall be liable to a fine not exceeding forty shillings a day during such contravention.

5.—(1.) If an inspector gives notice in writing to the occupier of a factory or workshop, or to any contractor employed by any such occupier that any place in which work is carried on for the purpose of or in connection with the business of the factory or workshop is injurious or dangerous to the health of the persons employed therein, then, if the occupier or contractor after the expiration of one month from the receipt of the notice gives out work to be done in that place, and the place is found by the court having cognisance of the case to be so injurious or dangerous, he shall be liable on summary conviction to a fine not exceeding ten pounds. *Penalty for employment of persons in places injurious to health.*

(2.) This section shall apply in the case of the occupier of any place from which any work is given out as if that place were a workshop.

(3.) Provided that this section shall not apply except in the case of persons employed in such classes of work, and in the case of persons giving out employment and employed within such areas, as may from time to time be specified by the Secretary of State by order made in accordance with section sixty-five of the principal Act, and no such order shall be made except with respect to an area where, by reason of the number and distribution of the population or the conditions under which work is carried on, there are special risks of injury or danger to the health of the persons employed and of the district.

6. If any occupier of a factory or workshop or laundry or of any place from which any work is given out, or any contractor employed by any such occupier, causes or allows wearing apparel to be made, cleaned, or repaired in any dwelling-house or building occupied therewith, whilst any inmate of the dwelling-house is suffering from scarlet fever or small-pox, then, unless he proves that he was not aware of the existence of the illness in the dwelling-house, and could not reasonably have been expected to become aware of it, he shall be liable to a fine not exceeding ten pounds. *Penalty for allowing wearing apparel to be made in place where infectious disease.*

7.—(1.) In paragraph (1) of section five of the principal Act for the words "a steam engine and water-wheel" shall be substituted the words "any water-wheel and engine worked by any such power." *Amendment of 41 & 42 Vict. c. 16,*

(2.) In paragraph (3) of the same section after the word "employed," the words "or working" shall be inserted. *s. 5, as to fencing.*

(3.) In paragraph (4) of the same section for the words "for the purpose of any manufacturing process" shall be substituted the words,



58 & 59 Vict.  
c. 87.

*Factory and  
Workshop  
Act, 1895.*

*Amendment  
of 41 & 42  
Vict. c. 16,  
s. 9, as to  
restriction on  
cleaning of  
machinery in  
motion.*

*Regulation as  
to position of  
self-acting  
machine.*

*Provisions for  
escape by fire*

"except where the parts are under repair or under examination in connection with repair, or are necessarily exposed for the purpose of cleaning or lubricating or for altering the gearing or arrangements of the parts of the machine."

8. The first paragraph of section nine of the principal Act (which relates to the cleaning of machinery) shall apply, so far as the dangerous parts of machinery are concerned, to young persons in like manner as it applies to children, and for this purpose such parts of the machinery shall, unless the contrary is proved, be presumed to be dangerous as are so notified by an inspector to the occupier of the factory.

9.—(1.) In a factory erected after the commencement of this Act, the traversing carriage of any self-acting machine shall not be allowed to run out within a distance of eighteen inches from any fixed structure not being part of the machine, if the space over which it so runs out is a space over which any person is liable to pass, whether in the course of his employment or otherwise.

(2.) A person employed in a factory shall not be allowed to be in the space between the fixed and the traversing portions of a self-acting machine unless the machine is stopped with the traversing portion on the outward run, but for the purpose of this provision the space in front of a self-acting machine shall not be included in the space aforesaid.

(3.) A factory in which a traversing carriage is allowed to run out in contravention of this section shall be deemed not to be kept in conformity with the principal Act, and any person allowed to be in the space aforesaid in contravention of this section, shall be deemed to be employed contrary to the provisions of the principal Act.

10.—(1.) A court of summary jurisdiction may, on complaint by an inspector, and on being satisfied that the provision of a movable fire escape or movable fire escapes is required for the safety of any of the persons employed in a factory or workshop, by order require the occupier of the factory or workshop to provide and maintain a movable fire escape or movable fire escapes sufficient for that purpose.

(2.) While any person employed in a factory or workshop is within the factory or workshop for the purpose of employment or meals, the doors of the factory or workshop, and of any room therein in which any such person is, shall not be locked or bolted or fastened in such a manner that they cannot be easily and immediately opened from the inside.

(3.) In every factory or workshop the construction of which is commenced after the commencement of this Act, the doors of each room in which more persons than ten are employed, shall, except in the case of sliding doors, be constructed so as to open outwards.

(4.) Sub-section one of section seven of the Act of 1891 shall apply to all workshops the construction of which is commenced after the commencement of this Act, and in which more than forty persons are employed, in like manner as it applies to factories, and sub-section two of that section shall apply to all workshops to which the foregoing provision of this sub-section does not apply, in like manner as it applies to factories.

(5.) For the purpose of enforcing the provisions of section seven of the Act of 1891 with respect to fire escapes, an inspector may give the like notice and take the like proceedings as under section four of the principal Act and section two of the Act of 1891, and the provisions of those sections shall apply accordingly.

(6.) If there is any contravention of an order under this section the occupier of the factory or workshop shall be liable to a fine not exceeding

forty shillings a day during such contravention, and a factory or workshop in which there is a contravention of the requirements of this section shall be deemed not to be kept in conformity with the principal Act. 58 & 59 Vict. c. 87.

11.—(1.) An application to refer, under section seven of the Act of 1891, a difference as to a notice by a sanitary authority or by the London County Council must be made within one month after the time when the difference arises.

*Factory and Workshop Act, 1895.*

(2.) Where such a difference is referred to arbitration, the notice of the sanitary authority or council shall be discharged, amended, or confirmed in accordance with the award in the arbitration. Provision as to arbitration with respect to fire escapes

### *Employment.*

14.—(1.) A young person shall not be employed overtime in pursuance of section fifty-three of the principal Act. Restriction of overtime employment.

(2.) A woman shall not be employed overtime in pursuance of section fifty-three of the principal Act for more than three days in any one week or for more than thirty days in any twelve months, and shall not be employed overtime in pursuance of section fifty-six of the principal Act, for more than sixty days in any twelve months; and, accordingly, in section fifty-three the words "three days" and "thirty days" shall be substituted for the words "five days" and "forty-eight days," and in section fifty-six the words "sixty days" shall be substituted for the words "ninety-six days."

(3.) Section fifty-eight of the principal Act shall, from and after the first day of January one thousand eight hundred and ninety-seven, apply only to male young persons of fourteen years of age or upwards, and the powers of the Secretary of State under section sixty-three of the principal Act shall extend to making orders as to the total number of hours of employment in each week, the periods of employment, and the intervals between such periods, which are to be conditions of the employment of young persons at night, and to rescinding such orders.

(4.) Section fifty-eight of the principal Act shall not authorise in any factory specified in part six of the Third Schedule to the principal Act the employment during the night of young persons in any process other than a process incidental to the business of the factory as described in part one of the Fourth Schedule to that Act.

(5.) A young person shall not, in pursuance of section fifty-nine of the principal Act, be employed for more than twelve hours continuously.

(6.) Section sixty of the principal Act shall, from and after the first day of January one thousand eight hundred and ninety-seven, apply only to male young persons of fourteen years of age and upwards, and nothing in that section shall be construed as authorising the employment of any person on Sunday.

(7.) For paragraph (4) of the said section sixty shall be substituted the following sub-section:

"(4.) Such young person shall not be employed continuously for more than five hours without an interval of at least half an hour for a meal."

(8.) Nothing in the Factory Acts shall be construed as authorising work during overtime on Saturday, or on any day substituted for Saturday as a half holiday, but work in accordance with section fifty of the principal Act shall not be deemed work during overtime.

15. Section seventy-seven of the principal Act, which requires registers Registers of children, &c.,

58 & 59 Vict. c. 37. to be kept of children and young persons, shall apply to all workshops to which section fifty-three of the principal Act applies.

*Factory and Workshop Act, 1895.*

made compulsory in certain workshops. Restrictions on employment inside and outside factory or workshop on the same day.

16. (1.) A child shall not, except during the period of employment, be employed in the business of a factory or workshop outside the factory, or workshop on any day during which the child is employed in the factory or workshop.

(2.) A young person or woman shall not, except during the period of employment, be employed in the business of a factory or workshop outside the factory or workshop on any day during which the young person or woman is employed in the factory or workshop both before and after the dinner hour.

(3.) For the purposes of this section a child, young person, or woman to or for whom any work is given out, or who is allowed to take out any work to be done by him or her outside a factory or workshop, shall be deemed to be employed outside the factory or workshop on the day on which the work is so given or taken out.

(4.) If a young person or woman is employed by the same employer on the same day both in a factory or workshop and in a shop, the whole period of employment of that young person or woman shall not exceed the number of hours permitted by the Factory Acts for his or her employment in the factory or workshop.

(5.) The principal Act shall apply as if any child, young person, or woman employed in contravention of this section were employed in a factory or workshop contrary to the provisions of that Act.

(6.) Where it is proved to the satisfaction of the Secretary of State that the customs or exigencies of the trade carried on in any class of factories or workshops, or parts thereof, either generally or situate in any particular locality, require that such trade should be exempted from the operation of this section, he may by order grant to such class of factories or workshops, or parts thereof, such special exemption as may be necessary.

#### *Holiday.*

Days to be observed as holidays in England and Wales.

17. Subject to and in the absence of any notice affixed and forwarded as provided by the principal Act and the Act of 1891, and substituting for any holiday hereinafter mentioned another holiday or two half-holidays, the holidays to be observed in a factory or workshop in England and Wales in pursuance of paragraphs (1) and (2) of section twenty-two of the principal Act shall be the whole of Christmas Day and of Good Friday, and of every bank holiday, and, unless any other holidays or half-holidays are so substituted, it shall not be necessary to affix in the factory or workshop any notice of the holidays or half-holidays to be observed, or to forward a copy of any such notice to the inspector of the district.

#### *Accidents.*

Notices of accidents—  
88 & 89 Vict. c. 17.

18. For section thirty-one of the principal Act the following section shall be substituted, namely:

(1.) Where there occurs in a factory or workshop any accident which either—

(a) causes loss of life to a person employed in the factory or in the workshop; or

(b) causes to any person employed in the factory or workshop such bodily injury as to prevent him on any one of the three working

days next after the occurrence of the accident from being employed for five hours on his ordinary work. 58 & 59 Vict. c. 37.

written notice shall forthwith be sent to the inspector for the district.

(2.) If the accident causes loss of life, or is produced either by machinery moved by steam, water, or other mechanical power, or through a vat, pan, or other structure filled with hot liquid or molten metal or other substance, or by explosion or escape of gas, steam or metal, then, unless notice thereof is required by section sixty-three of the Explosives Act, 1875, to be sent to a Government inspector, notice thereof shall forthwith be sent to the certifying surgeon of the district.

*Factory and  
Workshop  
Act, 1895.*

(3.) The notice shall state the residence of the person killed or injured, and the place to which he has been removed.

(4.) If any notice required by this section to be sent with respect to an accident in a factory or workshop is not so sent, the occupier of the factory or workshop shall be liable to a fine not exceeding five pounds.

(5.) If any accident to which this section applies occurs to a person employed in an iron mill or blast furnace, or other factory or workshop, where the occupier is not the actual employer of the person killed or injured, the actual employer shall immediately report the same to the occupier, and in default shall be liable to a fine not exceeding five pounds.

(6.) This section shall extend to workshops conducted on the system of not employing any child, young person, or woman therein.

19. Where a death has occurred by accident in any factory or workshop the coroner shall adjourn the inquest, unless an inspector or some person on behalf of a Secretary of State is present to watch the proceedings, and shall at least four days before holding the adjourned inquest send to the inspector notice in writing of the time and place of holding the adjourned inquest. Inquests.

Provided that if the accident has not occasioned the death of more than one person, and the coroner has sent to the inspector notice of the time and place of holding the inquest at such time as to reach the inspector not less than twenty-four hours before the time of holding the same, it shall not be imperative on him to adjourn the inquest in pursuance of this section if the majority of the jury think it unnecessary so to adjourn.

20.—(1.) Every occupier of a factory or workshop shall keep a register of accidents, and shall enter therein every accident occurring in the factory or workshop of which notice is required by the Factory Acts within one week after the occurrence of the accident, and this register shall be at all times open to inspection by the inspector and by the certifying surgeon for the district. Register of accidents.

(2.) If any occupier of a factory or workshop makes default in complying with the requirements of this section, he shall be liable on summary conviction to a fine not exceeding ten pounds.

21.—(1.) Where it appears to the Secretary of State that a formal investigation of any accident occurring in a factory or workshop and its causes and circumstances is expedient, the Secretary of State may direct that such an investigation be held, and with respect to any such investigation the provisions of sections forty-five and forty-six of the Coal Mines Regulation Act, 1887, shall have effect, except that references to the said Act in the said section forty-five shall be construed as references to the Factory Acts. Power to direct formal investigation —50 & 51 Vict. c. 58.

(2.) This section shall extend to workshops conducted on the system of not employing any child, young person, or woman therein.

58 & 59 Vict.  
c. 87.

SPECIAL RULES AND REQUIREMENTS.

*Laundries.*

*Factory and  
Workshop  
Act, 1895.*

Application of  
Factory Acts  
to laundries.

22.—(1.) In any laundry carried on by way of trade, or for purposes of gain, the following provisions shall apply:—

- (i.) The period of employment, exclusive of meal hours and absence from work, shall not exceed, for children, ten hours; for young persons, twelve hours; for women, fourteen hours, in any consecutive twenty-four hours; nor a total for children of thirty hours, for young persons and women of sixty hours, in any one week, in addition to such overtime as may be allowed in the case of women.
- (ii.) A child or young person or woman shall not be employed continuously for more than five hours without an interval of at least half an hour for a meal.
- (iii.) Children, young persons, and women employed in laundries shall have allowed to them the same holidays as are allowed to children, young persons, and women employed in a factory or workshop under the Factories and Workshops Acts, 1878 to 1895.
- (iv.) So far as regards sanitary provisions, safety, accidents, the affixing of notices and abstracts and the matters to be specified in such notices (so far as they apply to laundries), notice of occupation of a factory or workshop, powers of inspectors, fines, and legal proceedings for any failure to comply with the provisions of this section, and education of children, the Factory Acts shall have effect as if every laundry in which steam, water, or other mechanical power is used in aid of the laundry process were a factory, and every other laundry were a workshop; and as if every occupier of a laundry were the occupier of a factory or of a workshop.
- (v.) The notice to be affixed in each laundry shall specify the period of employment and the time for meals, but the period and times so specified may be varied before the beginning of employment on any day.
- (vi.) Sections seventeen and eighteen of the Act of 1891 shall apply to laundries in like manner as to factories or workshops.
- (2.) In the case of every laundry worked by steam, water, or other mechanical power—
  - (a) a fan or other means of a proper construction shall be provided, maintained, and used for regulating the temperature in every ironing-room, and for carrying away the steam in every washhouse in the laundry; and
  - (b) all stoves for heating irons shall be sufficiently separated from any ironing room, and gas irons emitting any noxious fumes shall not be used; and
  - (c) the floors shall be kept in good condition and drained in such manner as will allow the water to flow off freely.

A laundry in which these provisions are contravened shall be deemed to be a factory not kept in conformity with the principal Act.

(3.) Nothing in this section shall apply to any laundry in which the only persons employed are—

- (a) inmates of any prison, reformatory, or industrial school, or other institution for the time being subject to inspection under any Act other than the Factory Acts; or

(b) inmates of an institution conducted in good faith for religious or charitable purposes ; or 58 & 59 Vict  
a. 37.

(c) members of the same family dwelling there,  
or in which not more than two persons dwelling elsewhere are employed.

*Factory and  
Workshop  
Act, 1895.*

(4.) Women employed in laundries may work overtime, subject to the following conditions :

(a.) No woman shall work more than fourteen hours in any day.

(b.) The overtime worked shall not exceed two hours in any day.

(c.) Overtime shall not be worked on more than three days in any week or more than thirty days in any year.

(d.) The requirements of section sixty-six of the principal Act and of section fourteen of the Act of 1891 with respect to notices shall be observed.

#### *Docks, &c.*

23.—(1.) The following provisions, namely :—

(i.) Section eighty-two of the principal Act ;

(ii.) The provisions of the Factory Acts with respect to accidents ;

(iii.) Section sixty-eight of the principal Act with respect to the powers of inspectors ;

(iv.) Sections eight to twelve of the Act of 1891 with respect to special rules for dangerous employments ; and

(v.) The provisions of this Act with respect to the power to make orders as to dangerous machines

*Extension to  
docks, &c., of  
certain pro-  
visions of  
Factory Act.*

shall have effect as if—

(a) every dock, wharf, quay, and warehouse, and, so far as relates to the process of loading or unloading therefrom or thereto, all machinery and plant used in that process ; and

(b) any premises on which machinery worked by steam, water, or other mechanical power, is temporarily used for the purpose of the construction of a building or any structural work in connection with a building,

were included in the word factory, and the purpose for which the machinery is used were a manufacturing process, and as if the person who by himself, his agents, or workmen temporarily uses any such machinery for the before-mentioned purpose were the occupier of the said premises ; and for the purpose of the enforcement of those sections the person having the actual use or occupation of a dock, wharf, quay, or warehouse, or of any premises within the same or forming part thereof, and the person so using any such machinery, shall be deemed to be the occupier of a factory.

(2.) The provisions of this Act with respect to notice of accidents and the formal investigation of accidents shall have effect as if—

(a) any building which exceeds thirty feet in height, and which is being constructed or repaired by means of a scaffolding ; and

(b) any building which exceeds thirty feet in height, and in which more than twenty persons, not being domestic servants, are employed for wages ;

were included in the word “factory,” and as if, in the first case, the employer of the persons engaged in such construction or repair, and, in the second case, the occupier of the building, were the occupier of a factory.



58 & 59 Vict.  
c. 37.

Factory and  
Workshop  
Act. 1895.

Substitution  
of owner of  
tenement  
factory for  
occupier for  
certain pur-  
poses.

*Tenement Factories.*

24.—(1.) Where mechanical power is supplied to different parts of the same building occupied by different persons for the purpose of any manufacturing process or handicraft in such manner that those parts constitute in law separate factories, the owner (whether or not he is one of the persons so in occupation) of the building (which building is hereafter in this Act referred to as a tenement factory) shall, instead of the occupier be liable for the observance, and punishable for non-observance, of the following provisions, namely :

- (a.) Section three of the principal Act, with respect to the sanitary condition of a factory ; and
- (b.) Sections five and eighty-two of the principal Act, with respect to the fencing of machinery in a factory, except so far as those sections relate to such parts of the machinery as are supplied by the occupier ; and
- (c.) Save as hereinafter provided, section nineteen of the principal Act, with respect to the notices to be affixed in a factory, and the matters to be specified therein ; and
- (d.) Section thirty-three of the principal Act, with respect to the lime-washing and washing of the interior of a factory, so far as it relates to any engine house, passage or staircase, or to any room which is let to more than one tenant ; and
- (e.) Section thirty-six of the principal Act, with respect to the removal of dust, so far as that section requires the supply of pipes or other contrivances necessary for working the fan or other means for that purpose, and except in textile factories ; and
- (f.) Section seventy-eight of the principal Act, with respect to the affixing of an abstract and notices.

(2.) Where different industries are carried on in the same tenement factory, the obligation to affix the notice required by section nineteen of the principal Act shall be on the occupier and not on the owner.

(3.) Sections eight to eleven of the Act of 1891, shall, if and as far as in the case of a tenement factory the Secretary of State by order so directs, apply as if the owner of the factory were substituted for the occupier.

(4.) The provisions of this Act with respect to the power to make orders in the case of dangerous premises shall apply in the case of a tenement factory as if the owner were substituted for the occupier.

(5.) Where, by or under this section, the owner of a tenement factory is substituted for the occupier with respect to any provisions of the Factory Acts, any summons, notice, or proceeding, which for the purpose of any of those provisions is by the said Acts or any of them authorised or required to be served on or taken in relation to the occupier, is hereby authorised or required (as the case may be) to be served on or taken in relation to the owner.

(6.) For the purpose of the provisions of this Act with respect to tenement factories all buildings situate within the same close or curtilage shall be treated as one building.

(7.) This section shall not apply in the case of any occupier paying a rent in excess of two hundred pounds a year.

25.—(1.) Where grinding is carried on in a tenement factory, the owner of the factory shall be responsible for the observance of the regulations set forth in the First Schedule to this Act.

Regulations  
as to grinding  
and cutlery in  
tenement  
factory.

(2.) In every such tenement factory it shall be the duty of the owner and of the occupier of the factory respectively to see that such parts of the horsing chains and of the hooks to which the chains are attached as are supplied by them respectively are kept in efficient condition.

58 & 59 Vict.  
c. 87.

Factory and  
Workshop  
Act, 1895.

(3.) In every tenement factory where grinding or cutlery is carried on the owner of the factory shall provide that there shall at all times be instantaneous communication between each of the rooms in which the work is carried on and both the engine-room and the boiler-house.

(4.) A tenement factory in which there is any contravention of this section shall be deemed not to be kept in conformity with the principal Act, but for the purposes of any proceeding in respect of a provision for the observance of which the owner of the factory is responsible, that owner shall be substituted for the occupier of the factory.

(5.) This section shall not apply to a textile factory,

26. A certificate of the fitness of any young person or child for employment in a tenement factory shall be valid for his similar employment in any part of the same tenement factory.

Validity of  
certificate of  
fitness in  
tenement  
factory.

#### *Bakehouses.*

27.—(1.) Sections thirty-four and thirty-five of the principal Act shall apply to every bakehouse, and so much of those sections as limits the operation thereof to cities, towns, and places having a population of more than five thousand persons shall be repealed.

Provisions as  
to bakehouses  
—46 & 47  
Vict. c. 53.

(2.) In section fifteen of the Factory and Workshop Act, 1883, the words "which was not so let or occupied before the first day of June, one thousand eight hundred and eighty-three," shall be repealed.

(3.) A place under ground shall not be used as a bakehouse unless it is so used at the commencement of this Act, and if any place is so used in contravention of this Act it shall be deemed to be a workshop not kept in conformity with the principal Act.

#### *Special Restrictions as to Employment.*

28.—(1.) Section eight of the Act of 1891 shall extend to authorise the making of special rules or requirements prohibiting the employment of, or modifying or limiting the period of employment for, all or any classes of persons in any process or particular description of manual labour which is certified by the Secretary of State in pursuance of that section to be dangerous or injurious to health, or dangerous to life or limb. Provided that any special rules or requirements under this section which relate to the employment or period of employment for adult workers, shall be laid for forty days before both Houses of Parliament before coming into operation.

Power to pro-  
hibit or  
restrict em-  
ployment in  
dangerous  
trade.

(2.) Sections eight to twelve of the Act of 1891 are hereby declared to extend to workshops conducted on the system of not employing any child, young person, or woman therein.

#### *Special Provisions for Health.*

29.—(1.) Every medical practitioner attending on or called in to visit a patient whom he believes to be suffering from lead, phosphorus, or arsenical poisoning, or anthrax, contracted in any factory or workshop, shall (unless the notice required by this section has been previously sent) send to the Chief Inspector of Factories at the Home Office, London, a notice stating the name and full postal address of the patient and the

Notification of  
certain  
diseases to  
chief inspector.

58 & 59 Vict.  
c. 37.

*Factory and  
Workshop  
Act, 1895.*

disease from which in the opinion of the medical practitioner the patient is suffering, and shall be entitled in respect of every notice sent in pursuance of this section to a fee of two shillings and sixpence to be paid as part of the expenses incurred by the Secretary of State in the execution of the principal Act.

(2.) If any medical practitioner, when required by this section to send a notice, fails forthwith to send the same, he shall be liable to a fine not exceeding forty shillings.

(3.) Written notice of every case of lead, phosphorus, or arsenical poisoning, or anthrax, occurring in a factory or workshop, shall forthwith be sent to the inspector and to the certifying surgeon for the district; and the provisions of the Factory Acts with respect to accidents shall apply to any such case in like manner as to any such accident as is in those sections mentioned.

(4.) The Secretary of State may by order made in accordance with section sixty-five of the principal Act apply the provisions of this section to any other disease occurring in a factory or workshop, and thereupon this section and the provisions referred to therein shall apply accordingly.

Lavatories in  
dangerous  
trades

30.—(1.) In every factory or workshop where lead, arsenic, or any other poisonous substance is used, suitable washing conveniences shall be provided for the use of the persons employed in any department where such substances are used.

(2.) A factory or workshop in which there is a contravention of this section shall be deemed not to be kept in conformity with the principal Act.

Provisions as  
to humid  
factories—  
52 & 53 Vict.  
c. 62.

31.—(1.) The Cotton Cloth Factories Act, 1889, shall apply to every textile factory in which atmospheric humidity is artificially produced by steaming or other mechanical appliances, and which is not for the time being subject to special rules under section eight of the Act of 1891, with such modifications of the schedule with respect to the maximum limits of humidity as the Secretary of State by order made in accordance with section sixty-five of the principal Act may direct.

(2.) In section nine of the Cotton Cloth Factories Act, 1889, the words "and the arrangements for such ventilation shall be kept in operation subject, as far as possible, to the control of the persons employed therein," shall be repealed.

Temperature  
in factories  
and work-  
shops.

32.—(1.) In every factory and workshop adequate measures shall be taken for securing and maintaining a reasonable temperature in each room in which any person is employed.

(2.) A factory or workshop in which there is a contravention of this section shall be deemed not to be kept in conformity with the principal Act.

Amendment  
of 41 & 42  
Vict. c. 16,  
s. 36, as to  
use of fans.

33.—Section thirty-six of the principal Act shall extend to any factory or workshop where any process is carried on by which any gas, vapour, or other impurity is generated and inhaled by the workers to an injurious extent.

#### MISCELLANEOUS AMENDMENTS.

Annual  
returns of  
persons  
employed.

34.—The occupier of every factory and workshop shall on or before the first day of March in every year send to the inspector of the district on behalf of the Secretary of State a correct return specifying, with respect to the year ending on the preceding thirty-first day of December, the number of persons employed in the factory or workshop, with such par-

tiouars as to the age and sex of the persons employed as the Secretary of State may direct, and in default of complying with this section shall be liable to a fine not exceeding ten pounds.

58 & 59 Vict.  
c. 87.

35.—(1.) In every place where section twenty-two of the Public Health Acts Amendment Act, 1890, is not in force every factory or workshop shall be provided with sufficient and suitable accommodation in the way of sanitary conveniences, having regard to the number of persons employed in or in attendance at the factory or workshop, and also where persons of both sexes are employed or intended to be employed, or in attendance, with proper separate accommodation for persons of each sex.

Factory and  
Workshop  
Act, 1895.

Sanitary  
conveniences  
—58 & 54  
Vict. c. 59.

(2.) A factory or workshop in which there is a contravention of this section shall be deemed not to be kept in conformity with the principal Act.

36.—(1.) In the regulation numbered (1) in section thirteen of the principal Act, after the words “end at seven o’clock in the evening” shall be inserted the words “or begin at eight o’clock in the morning and end at eight o’clock in the evening.”

Amendment  
of 41 & 42  
Vict. c. 16,  
ss. 13, 14, as  
to period of  
employment.

(2.) In the regulation numbered (2) in the same section, after the words “two o’clock in the afternoon,” shall be inserted the words “or when it begins at seven o’clock in the morning, at three o’clock in the afternoon, or begin at eight o’clock in the morning and end at four o’clock in the afternoon.”

(3.) If in a non-textile factory or workshop the period of employment of young persons and women is from eight o’clock in the morning to eight o’clock in the evening, then, subject to the provisions of section fourteen of the principal Act, the period of employment of a child in a morning set may begin at eight o’clock in the morning, and in an afternoon set may end at eight o’clock in the evening, or on Saturday at four o’clock in the afternoon, and the period of employment of a child employed on the alternate day system may begin at eight o’clock in the morning, and end at eight o’clock in the evening, or on Saturday at four o’clock in the afternoon.

37.—(1.) In section fifty-three of the principal Act—

For the words “the factories and workshops or parts thereof” shall be substituted the words “the non-textile factories and workshops or parts thereof and warehouses”; and

For the words “the factories and workshops and parts thereof” shall be substituted the words “the non-textile factories and workshops and parts thereof and warehouses,”

Amendment  
of 41 & 42  
Vict. c. 16,  
s. 53, and  
Third Sche-  
dule, Part III.

wherever those words respectively occur in that section.

(2.) In Part Three of the Third Schedule to the principal Act, before the word “factories” shall be inserted the word “non-textile,” the words “and also” are hereby repealed, and for the paragraph marked “(x)” there shall be substituted the following paragraph, namely:

“The said exception applies also to any part of a factory (whether textile or non-textile) or workshop which is a warehouse not used for any manufacturing process or handicraft, and in which persons are solely employed in polishing, cleaning, wrapping, or packing-up goods.”

38. Nothing in the principal Act shall prevent the employment of male young persons to whom section fifty-eight of that Act applies in three shifts of not more than eight hours each, provided that there is an interval of two unemployed shifts between each two shifts of employment.

Amendment  
of 41 & 42  
Vict. c. 16,  
s. 58, as to  
shifts

58 & 59 Vict  
c. 37.

*Factory and  
Workshop  
Act, 1895.*

Power to  
treat separate  
branches as  
separate  
factories.  
Particulars  
respecting  
wages to be  
furnished in  
certain cases

39. The Secretary of State may by order made in accordance with section sixty-five of the principal Act direct, with respect to any class of factories or workshops, that different branches or departments of work carried on in the same factory or workshop shall, for all or any of the purposes of the Factory Acts, be treated as if they were different factories or workshops.

40.—(1.) In every textile factory the occupier shall, for the purpose of enabling each worker who is paid by the piece to compute the total amount of wages payable to him in respect of his work, cause to be published particulars of the rate of wages applicable to the work to be done, and also particulars of the work to which that rate is to be applied, as follows :—

- (a.) The particulars of the rate of wages applicable to the work to be done by each weaver in the worsted and woollen, other than the hosiery, trades shall be furnished to him in writing at the time when the work is given out to him, and shall also be exhibited on a placard not containing any other matter, and posted in a position where it is easily legible.
- (b.) The particulars of the rate of wages applicable to the work to be done by each worker, other than such a weaver as aforesaid, shall be furnished to him in writing at the time when the work is given out to him ; provided that if the same particulars are applicable to the work to be done by each of the workers in one room it shall be sufficient to exhibit them in that room on a placard not containing any other matter, and posted in a position where it is easily legible :
- (c.) Such particulars of the work to be done by each worker as affect the amount of wages payable to him shall (except so far as they are ascertainable by an automatic indicator) be furnished to him in writing at the time when the work is given out to him :
- (d.) The particulars either as to rate of wages or as to work shall not be expressed by means of symbols :
- (e.) Where an automatic indicator is used for ascertaining work, such indicator shall have marked upon its case the number of teeth in each wheel and the diameter of the driving roller, except that in the case of spinning machines with traversing carriages the number of spindles and the length of the stretch in such machines shall be so marked in substitution for the diameter of the driving roller :
- (f.) Where such particulars of the work to be done by each worker as affect the amount of work payable to him are ascertained by an automatic indicator, and a placard containing the particulars as to the rate of wages is exhibited in each room, in pursuance of an agreement between employers and workmen and in conformity with the requirements of this section, the exhibition thereof shall be a sufficient compliance with this section.

(2.) If the occupier fails to comply with the requirements of this section, or fraudulently uses a false indicator for ascertaining the particulars or amount of any work paid for by the piece, or if any workman fraudulently alters an automatic indicator, the occupier or workman, as the case may be, shall be liable for each offence to a fine of not more than ten pounds, and, in case of a second or subsequent conviction within two years from the last conviction for that offence, not less than one pound. Provided



that an indicator shall not be deemed false if it complies with the requirements of this section. 58 & 59 Vict. c. 37.

(3.) If anyone engaged as a worker in any factory or workshop, having received such particulars, whether they are furnished directly to him or to a fellow workman, discloses the particulars for the purpose of divulging a trade secret he shall be liable to a fine not exceeding ten pounds.

Factory and  
Workshop  
Act, 1895.

(4.) If anyone for the purpose of obtaining knowledge of or divulging a trade secret solicits or procures a person so engaged in any factory to disclose such particulars, or with that object pays or rewards any such person, or causes any such person to be paid or rewarded for so disclosing such particulars, he shall be liable to a fine not exceeding ten pounds.

(5.) This section shall take effect instead of section twenty-four of the Act of 1891.

(6.) The Secretary of State, on being satisfied by the report of an inspector that the provisions of this section are applicable to any class of non-textile factories, or to any class of workshops, may, if he thinks fit, by order made in accordance with section sixty-five of the principal Act, apply the provisions of this section to any such class, subject to such modifications as may in his opinion be necessary for adapting those provisions to the circumstances of the case.

41. Every person who is in occupation of a workshop at the commencement of this Act shall before the expiration of twelve months from the commencement of this Act, unless he has already done so in pursuance of section twenty-six of the Act of 1891, serve on the inspector for the district a written notice containing the name of the workshop, the place where it is situate, the address to which he desires his letters to be addressed, the nature of the work, and the name of the person or firm under which the business of the workshop is carried on, and in default shall be liable to a fine not exceeding five pounds. Any notice so served shall be forthwith forwarded to the sanitary authority of the district in which the workshop is situate.

Notice of  
existing work-  
shops.

42.—(1.) Every occupier of a factory or workshop to whom section twenty-seven of the Act of 1891 for the time being applies, and every contractor employed by any such occupier in the business of the factory or workshop, shall, on or before the first day of March and the first day of September in each year, send to the inspector for the district in which the factory or workshop is situate a list showing the names of all persons directly employed by him, either as workmen or as contractors, in the business of the factory or workshop outside the factory or workshop, and the places where they are employed, and in default of so doing shall be liable to a fine not exceeding forty shillings.

Amendment  
and extension  
of 54 & 55  
Vict. c. 75,  
s. 27, respect-  
ing lists of  
outworkers.

(2.) Section twenty-seven of the Act of 1891 and this section shall apply to any place from which any work of making wearing apparel for sale is given out, and to the occupier of that place, and to every contractor employed by any such occupier in connection with the said work, as if that place were a workshop.

43. Failure to enter in the register kept in pursuance of section seventy-seven of the principal Act the prescribed particulars as to lime-washing shall be *prima facie* evidence of failure to observe the requirements of the Factory Acts with respect to lime-wash.

Evidence as to  
failure to  
limewash

44.—(1.) In sections sixty-six and seventy-five of the principal Act the words "the inspector for the district" shall be substituted for the words "an inspector" wherever they occur in those sections.

Amendment  
of 41 & 42  
Vict. c. 16,  
ss. 66, 75, and  
54 & 55 Vict.  
c. 75, s. 29.



- 58 & 59 Vict. c. 37. (2.) In section twenty-nine of the Act of 1891. the words "the factory inspector for the district within which the offence is charged to have been committed" shall be substituted for the words "a factory inspector."
- Factory and Workshop Act, 1895.* 45. Section sixty-eight of the principal Act shall have effect as if in the paragraph numbered (2), which empowers an inspector to take with him a constable into a factory the words "or workshop" were inserted after the word "factory."
- Amendment of 41 & 42 Vict. c. 16, s. 68, as to powers of inspector. 47. Every order made in accordance with section sixty-five of the principal Act shall be published in such manner as the Secretary of State thinks best adapted for the information of all persons interested.
- Publication of orders. 48. Any notice, order, requisition, summons, or document, required or authorised by the Factory Acts to be served on the owner, as defined by this Act, of a factory or workshop, may be served by delivering the same or a true copy thereof to the agent of the owner as so defined.
- Service of documents on owner. 49. A person charged with an offence under the Factory Acts may, if he thinks fit, tender himself to be examined on his own behalf, and thereupon he may give evidence in the same manner and with the like effect and consequences as any other witness.
- Competency of defendant to give evidence. 50. Where, in pursuance of section eighty-seven of the principal Act, some person other than the occupier of a factory or workshop is brought before a court of summary jurisdiction, and convicted of an offence with which the occupier was charged, that person shall in the discretion of the court be liable to pay any costs incidental to the proceeding.
- Payment of costs by actual offender in lieu of occupier. 51. An inspector, if so authorised in writing under the hand of the Secretary of State may, although he is not counsel, or solicitor, or law agent, prosecute, conduct, or defend, before a court of summary jurisdiction or justice any information, complaint, or other proceeding arising under the Factory Acts, or in the discharge of his duty as such inspector.
- Right of inspector to conduct proceedings before magistrates. 52. In the application of the Factory Acts to Ireland—  
The expression "Public Health (Ireland) Act, 1874," where it occurs in sub-section eleven of section one hundred and six of the principal Act, and the expression "Public Health Act, 1875," where it occurs in sections four and seven of the Act of 1891, shall be construed as meaning the Public Health (Ireland) Act, 1878, and the Act amending the same.
- Application to Ireland—41 & 42 Vict. c. 52. 53. In this Act, unless the context otherwise requires—  
(1.) The expression "the Factory Acts" means the Factory and Workshop Acts, 1878 to 1891, and this Act :  
The expression "the principal Act" means the Factory and Workshop Act, 1878 :  
The expression "the Act of 1891" means the Factory and Workshop Act, 1891 :  
The expression "owner" has the meaning given to it by section four of the Public Health Act, 1875.
- Interpretation—38 & 39 Vict. c. 55. (2.) References to any section of the Factory Acts shall be construed as references to that section as amended by subsequent enactments, including this Act.
- Repeal. 54. The Acts mentioned in the Third Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule.
- Commencement of Act. 55. This Act shall come into operation on the first day of January one thousand eight hundred and ninety-six.

56. This Act may be cited as "The Factory and Workshop Act 1895," and shall be construed as one with the Factory and Workshop Acts, 1878 to 1891, and those Acts and this Act may be cited collectively, as "The Factory and Workshop Acts, 1878 to 1895."

58 & 59 Vict  
c. 37.  
*Factory and  
Workshop  
Act, 1895.*

FIRST SCHEDULE. (Section 25.)

REGULATION AS TO GRINDING IN TENEMENT FACTORY.

Short titles  
and construc-  
tion.

- (1.) Boards to fence the shafting and pulleys, locally known as drum boards, shall be provided and kept in proper repair.
- (2.) Hand rails shall be fixed over the drums and kept in proper repair.
- (3.) Belt guards, locally known as scotchmen, shall be provided and kept in proper repair.
- (4.) Every floor, which is constructed after the commencement of this Act, shall be so constructed and maintained as to facilitate the removal of slush, and all necessary shoots, pits, and other conveniences shall be provided for facilitating such removal.
- (5.) Every grinding room or hull, which is established after the commencement of this Act, shall be so constructed that for the purpose of light grinding there shall be a clear space of three feet at least between each pair of troughs and for the purpose of heavy grinding there shall be a clear space of four feet at least between each pair of troughs and six feet at least in front of each trough.
- (6.) The sides of all drums in every grinding room or hull shall be closely fenced.
- (7.) Except in pursuance of a special exemption granted by the Secretary of State, no grindstone shall be run before any fire-place or in front of another grindstone.
- (8.) No grindstone erected after the commencement of this Act shall be run before any door or other entrance.

SECOND SCHEDULE. (Section 46.)

SCALE OF FEES TO CERTIFYING SURGEONS.

Under 10 hands	...	...	...	...	...	2s. 6d. per visit.
.. 20	,	...	...	...	...	3s.
.. 30	..	...	...	...	...	3s. 6d.
.. 50	..	...	...	...	...	4s.
.. 75	..	...	...	...	...	4s. 6d.
.. 100	..	...	...	...	...	5s.
Over 100	..	...	...	...	...	7s. 6d.

With the addition of 1s. for every mile or portion of a mile in excess of one mile from the certifying surgeon's residence.

THIRD SCHEDULE. (Section 54.)

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
41 & 42 Vict. c. 16.	The Factory and Workshop Act, 1878	Sections thirty-one and forty-two. Part one of the Third Schedule. Part three of the Third Schedule, from "and also" to "packing-up goods."
54 & 55 Vict. c. 75.	The Factory and Workshop Act, 1891	Sub-section one of section twenty-two, and section twenty-four and sub-section five of section thirty-three.
57 & 58 Vict c. 28.	The Notice of Accidents Act, 1894	In paragraph (1) of the Schedule the word "gas-work" and the words "harbour dock, port, pier, quay." Paragraph (2) of the Schedule.

## CORRUPT AND ILLEGAL PRACTICES PREVENTION ACT, 1895.

58 &amp; 59 VIOT. CAP. 40.

*An Act to amend the Corrupt and Illegal Practices Act, 1883.—[6th July, 1895.]*

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Certain false statements concerning a candidate to be an illegal practice—  
46 & 47 Vict. c. 51.

1. Any person who, or the directors of any body or association corporate which, before or during any parliamentary election, shall, for the purpose of affecting the return of any candidate at such election, make or publish any false statement of fact in relation to the personal character or conduct of such candidate shall be guilty of an illegal practice within the meaning of the provisions of the Corrupt and Illegal Practices Prevention Act, 1883, and shall be subject to all the penalties for and consequences of committing an illegal practice in the said Act mentioned, and the said Act shall be taken to be amended as if the illegal practice defined by this Act had been contained therein.

Evidence on hearing of charge under this Act.

2. No person shall be deemed to be guilty of such illegal practice if he can show that he had reasonable grounds for believing, and did believe, the statement made by him to be true.

Any person charged with an offence under this Act, and the husband or wife of such person, as the case may be, shall be competent to give evidence in answer to such charge.

Injunction against person making false statement.

3. Any person who shall make or publish any false statement of fact as aforesaid may be restrained by interim or perpetual injunction by the High Court of Justice from any repetition of such false statement or any false statement of a similar character in relation to such candidate, and for the purpose of granting an interim injunction *prima facie* proof of the falsity of the statement shall be sufficient.

Candidate exonerated in certain cases of illegal practice by agent.

4. A candidate shall not be liable, nor shall be subject to any incapacity, nor shall his election be avoided, for any illegal practice under this Act committed by his agent other than his election agent, unless it can be shown that the candidate or his election agent has authorised or consented to the committing of such illegal practice by such other agent, or has paid for the circulation of the false statement constituting the illegal practice, or unless upon the hearing of an election petition the election court shall find and report that the election of such candidate was procured or materially assisted in consequence of the making or publishing of such false statements.

Short title.

5. This Act may be cited as "The Corrupt and Illegal Practices Prevention Act, 1895," and shall be construed as one with the Corrupt and Illegal Practices Prevention Act, 1883, and that Act and this Act may be cited together as "The Corrupt and Illegal Practices Prevention Acts, 1883 and 1895."

STATUTES AND PARTS OF STATUTES  
AFFECTING THE CRIMINAL LAW,  
PASSED IN THE SESSION OF PARLIAMENT OF 1896.

FRIENDLY SOCIETIES ACT, 1896.

59 & 60 VICT. CAP. 25.

*An Act to consolidate the Law relating to Friendly and other Societies.—*  
[7th August, 1896.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

*Offences, Penalties, and Legal Proceedings.*

84. It shall be an offence under this Act if—

Offences.

- (a) a registered society or branch or an officer or member thereof fails to give any notice, send any return or document, do or allow to be done, any thing which the society, branch officer, or person is by this Act required to give, send, do, or allowed to be done ; or
- (b) a registered society or branch or an officer or member thereof wilfully neglects or refuses to do any act or to furnish any information required for the purposes of this Act by the chief or other registrar or by any other person authorised under this Act, or does anything forbidden by this Act : or
- (c) a registered society or branch or an officer or member thereof makes a return or wilfully furnishes information in any respect false or insufficient : or
- (d) an officer or member of a body which, having been a branch of a society, has wholly seceded or been expelled from that society, thereafter uses the name of that society or any name implying that the body is a branch of that society, or the number by which that body was designated as such branch : or
- (e) where a dispute is referred under this Act to the chief or other registrar, a person refuses to attend or to produce any documents or to give evidence before the chief or other registrar : or
- (f) a society or branch whether registered or unregistered, pays money on the death of a child under ten years of age otherwise than is provided by this Act : or
- (g) a parent or personal representative of a parent claiming money on the death of a child produces a certificate of the death other than is in this Act provided to the society or branch from which the money is claimed, or produces a false certificate, or one fraudulently obtained, or in any way attempts to defeat the

9 & 60 Vict.  
c. 25.

*Friendly  
Societies Act,*  
1896.

Offences by  
societies to be  
also offences  
by officers, &c.  
Continuing  
offences.

Punishment  
of fraud, false  
declarations,  
and misappropriations.

provisions of this Act with respect to payments upon the death of children.

85. Where a registered society or branch is guilty of an offence under this Act every officer of the society or branch bound by the rules thereof to fulfil any duty whereof the offence is a breach, or if there is no such officer, then every member of the committee, unless that member is proved to have been ignorant of or to have attempted to prevent the commission of the offence, shall be liable to the same penalty as if he had committed the offence.

86. Every default under this Act constituting an offence, if continued shall constitute a new offence in every week during which the default continues.

87.—(1) If any person, with intent to mislead or defraud, gives to any other person a copy of any rules, laws, regulations, or other documents, other than the rules of a registered society or branch, on the pretence that they are the existing rules of that society or branch, or that there are no other rules of the society or branch, or gives to any person a copy of any rules on the pretence that those rules are the rules of a registered society or branch when the society or branch is not registered, the person so offending shall be guilty of a misdemeanour.

(2.) If any person knowingly makes a false or fraudulent statement in any statutory declaration required by this Act, he shall be guilty of a misdemeanour.

(3.) If any person obtains possession by false representation or imposition of any property of a registered society or branch, or withholds or misapplies any such property in his possession or wilfully applies any part thereof to purposes other than those expressed or directed in the rules of the society or branch and authorised by this Act, he shall, on such complaint as is in this section mentioned, be liable on summary conviction to a fine not exceeding twenty pounds and costs, and to be ordered to deliver up all such property, or to repay all sums of money applied improperly, and in default of such delivery or repayment or of the payment of such fine and costs as aforesaid, to be imprisoned, with or without hard labour, for any time not exceeding three months.

(4.) Complaint under this section may be made—

(a) in the case of a registered society, by the society or any member authorised by the society, or the trustees or committee of the society ; or

(b) in the case of a registered branch, by

(i.) the branch or any member authorised by the branch or the trustees or committee thereof ; or

(ii.) the central body of the society of which the branch forms part ; or

(iii.) any member of the society or branch authorised by the central body ; or

(c) in any case, by the chief registrar or any assistant registrar by his authority, or by any member of the society or branch authorised by the central office.

(5.) Nothing in this Act shall prevent any such person from being proceeded against by way of indictment, if not previously convicted of the same offence under the provisions of this Act.

Fine for  
falsification

88. If any person wilfully makes, orders, or allows to be made, any entry, erasure in, or omission from a balance sheet of a registered society or branch, or a return or document required to be sent, produced, or delivered for the purposes of this Act, with intent to falsify the same, or

to evade any of the provisions of this Act, he shall be liable to a fine not exceeding fifty pounds. 59 & 60 VICT c. 25.

89. A society or branch, and an officer or member of a society or branch, or other person guilty of an offence under this Act for which a fine is not expressly provided shall be liable to a fine of not more than five pounds. *Friendly Societies Act, 1896.*

90. If an officer or person aids or abets in the amalgamation or transfer of engagements or in the dissolution of a friendly society otherwise than as in this Act provided he shall be liable on summary conviction to the fine imposed by this Act for offences thereunder, or to be imprisoned with hard labour for a term not exceeding three months. *Fine for ordinary offences. Special offences in the case of friendly societies.*

91.—(1.) A fine imposed by this Act, or by any regulations thereunder, or by the rules of a registered society or branch, shall be recoverable in a court of summary jurisdiction. *Recovery of fines.*

(2.) Any such fine shall be recoverable at the suit of the chief registrar, or of any assistant registrar, or of any person aggrieved.

92. In England and Ireland all offences and fines under this Act may be prosecuted and recovered in the manner directed by the Summary Jurisdiction Acts either— *Jurisdiction of court of summary jurisdiction.*

(a) at the place where the offence was committed ; or

(b) as respects a prosecution against a registered society or branch or an officer thereof, at the place where the registered office of the society or branch is situated ; or

(c) as respects a prosecution against a person other than a registered society or branch or an officer thereof, at the place where the person is resident at the time of the institution of the prosecution.

93.—(1.) In England or Ireland any person may appeal to quarter sessions from any order or conviction made by a court of summary jurisdiction under this Act. *Appeals.*

(2.) In Scotland any person may appeal from any order or conviction under this Act in accordance with the provisions of the Summary Jurisdiction (Scotland) Acts.

94.—(1.) The trustees of a registered society or branch, or any other officers authorised by the rules thereof, may bring or defend, or cause to be brought or defended, any action or other legal proceeding in any court whatsoever, touching or concerning any property, right, or claim of the society or branch, and may sue and be sued in their proper names, without other description than the title of their office. *Legal proceedings.*

(2.) In legal proceedings brought under this Act by a member, or person claiming through a member, a registered society or branch may also be sued in the name, as defendant, of any officer or person who receives contributions or issues policies on behalf of the society or branch within the jurisdiction of the court in which the legal proceeding is brought, with the addition of the words "on behalf of the society or branch" (naming the same).

(3.) A legal proceeding shall not abate or be discontinued by the death, resignation, or removal from office of any officer, or by any act of any such officer after the commencement of the proceedings.

(4.) The summons, writ, process, or other proceeding, to be issued to or against the officer or other person sued on behalf of a registered society or branch, shall be sufficiently served by personally serving that officer or other person, or by leaving a true copy thereof at the registered office of the society, or branch, or at any place of business of the



59 & 60 VICT. c. 25. society or branch within the jurisdiction of the court in which the proceeding is brought, or, if that office or place of business is closed, by posting the copy on the outer door of that office or place of business.

*Friendly Societies Act, 1896.*

(5.) In all cases where the said summons, writ, process, or other proceeding is not served by means of such personal service or by leaving a true copy thereof at the registered office of the society or branch as aforesaid, a copy thereof shall be sent in a registered letter addressed to the committee at the registered office of the society or branch, and posted at least six days before any further step is taken on the proceeding.

Evidence of documents.

100. Every document bearing the seal or stamp of the central office shall be received in evidence without further proof; and every document purporting to be signed by the chief or any assistant registrar, or any inspector, or public auditor or valuer under this Act, shall, in the absence of any evidence to the contrary, be received in evidence without proof of the signature.

#### *Application of Act.*

Application to existing societies.

101.—(1.) This Act shall apply to societies and branches subsisting at the commencement of this Act which or the rules of which have been registered, enrolled, or certified, under any Act, relating to friendly societies or cattle insurance societies, as if they had been registered under this Act, and the rules of those societies and branches shall, so far as they are not contrary to any express provision of this Act, continue in force until altered or rescinded.

(2.) Where the contingent annual payment to which the members or the nominees of the members of friendly societies or branches, established before the fifteenth day of August one thousand eight hundred and fifty, may become entitled exceed the limit fixed by this Act, the rules of those societies and branches shall continue to be valid, anything in this Act to the contrary notwithstanding.

### LONDON CAB ACT, 1896.

59 & 60 VICT. CAP. 27.

*An Act to amend the Law relating to Cabs in London.*—[7th August, 1896.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Penalties for defrauding cabmen.

1. If any person commits any of the following offences with respect to a cab, namely:

(a) hires a cab, knowing or having reason to believe that he cannot pay the lawful fare, or with intent to avoid payment of the lawful fare; or

(b) fraudulently endeavours to avoid payment of a fare lawfully due from him; or

(c) having failed or refused to pay a fare lawfully due from him, either refuses to give to the driver an address at which he can be found, or, with intent to deceive, gives a false address,

he shall be liable on summary conviction to pay, in addition to the lawful

fare, a fine not exceeding forty shillings, or, in the discretion of the court to be imprisoned for a term not exceeding fourteen days; and the whole or any part of any fine imposed may be applied in compensation to the driver.

2. Section eighteen of the London Hackney Carriage Act, 1853, is hereby repealed from "and in case of any dispute" to the end of the section.

3. In this Act the expression "cab" shall mean any hackney carriage within the meaning of the Metropolitan Public Carriage Act, 1869.

4. This Act may be cited as "The London Cab Act, 1896."

59 & 60 VICT.  
c. 27.

London Cab  
Act, 1896.

Repeal of  
16 & 17 Vict.  
c. 33.

Meaning of  
cab—32 & 33  
Vict. c. 115.  
Short title.

## LOCOMOTIVES ON HIGHWAYS ACT, 1896.

59 & 60 VICT. CAP. 36.

*An Act to amend the Law with respect to the Use of Locomotives on Highways.*—[14th August, 1896.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:

1.—(1.) The enactments mentioned in the schedule to this Act, and any other enactment restricting the use of locomotives on highways, and contained in any public general or local and personal Act in force at the passing of this Act, shall not apply to any vehicle propelled by mechanical power if it is under three tons in weight unladen, and is not used for the purpose of drawing more than one vehicle, such vehicle (with its locomotive not to exceed in weight unladen four tons), and is so constructed that no smoke or visible vapour is emitted therefrom except from any temporary or accidental cause; and vehicles so exempted, whether locomotives or drawn by locomotives, are in this Act referred to as light locomotives. Provided that—

Exemption of  
light loco-  
motives from  
certain statu-  
tory provi-  
sions.

(a) the council of any county or county borough shall have power to make bye-laws preventing or restricting the use of such locomotives upon any bridge within their area, where such council are satisfied that such use would be attended with damage to the bridge or danger to the public:

(b) a light locomotive shall be deemed to be a carriage within the meaning of any Act of Parliament, whether public general or local, and of any rule, regulation, or bye-law, made under any Act of Parliament, and, if used as a carriage of any particular class, shall be deemed to be a carriage of that class, and the law relating to carriages of that class shall apply accordingly.

(2.) In calculating for the purposes of this Act the weight of a vehicle unladen, the weight of any water, fuel, or accumulators, used for the purpose of propulsion, shall not be included.

2. During the period between one hour after sunset and one hour before sunrise, the person in charge of a light locomotive shall carry attached thereto a lamp so constructed and placed as to exhibit a light in accordance with the regulations to be made by the Local Government Board.

Regulations  
as to lights.

59 & 60 VICT.  
c. 36.

*Locomotives  
on Highways  
Act, 1896.*

Locomotives  
to carry a  
bell.  
Rate of speed.  
Use of petro-  
leum, &c.—  
34 & 35 Vict.  
c. 105—  
42 & 43 Vict.  
c. 47—44 & 45  
Vict. c. 67.  
Local Govern-  
ment Board  
regulations.

3. Every light locomotive shall carry a bell or other instrument capable of giving audible and sufficient warning of the approach or position of the carriage.

4. No light locomotive shall travel along a public highway at a greater speed than fourteen miles an hour, or than any less speed that may be prescribed by regulations of the Local Government Board.

5. The keeping and use of petroleum or any other inflammable liquid or fuel for the purpose of light locomotives shall be subject to regulations made by a Secretary of State, and regulations so made shall have effect notwithstanding anything in the Petroleum Acts 1871 to 1881.

6. (1.) The Local Government Board may make regulations with respect to the use of light locomotives on highways, and their construction and the conditions under which they may be used.

(2.) Regulations under this section may, if the Local Government Board deem it necessary, be of a local nature and limited in their application to a particular area, and may, on the application of any local authority, prohibit or restrict the use of locomotives for purposes of traction in crowded streets, or in other places where such use may be attended with danger to the public.

All regulations under this section shall have full effect notwithstanding anything in any other Act, whether general or local, or any bye-laws or regulations made thereunder.

Every regulation purporting to be made in pursuance of this section shall be forthwith laid before both Houses of Parliament.

Penalties.

7. A breach of any bye-law or regulation made under this Act, or of any provision of this Act, may, on summary conviction, be punished by a fine not exceeding ten pounds.

Construction  
of wheels of  
locomotives  
on roads.  
Short title  
and com-  
mencement.

9. The requirements of sub-section (4) of section twenty-eight of the Highways and Locomotives Amendment Act, 1878, may be from time to time varied by order of the Local Government Board.

12. This Act may be cited as "The Locomotives on Highways Act, 1896," and shall come into operation on the expiration of three months from the passing thereof.

## TRUCK ACT, 1896.

59 & 60 VICT. CAP. 44.

*An Act to amend the Truck Acts.—[14th August, 1896.]*

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Deductions or  
payments in  
respect of  
fines.

1.—(1.) An employer shall not make any contract with any workman for any deduction from the sum contracted to be paid by the employer to the workman, or for any payment to the employer by the workman, for or in respect of any fine, unless—

(a) the terms of the contract are contained in a notice kept constantly affixed at such place or places open to the workmen and in such a position that it may be easily seen, read, and copied by any person whom it affects; or the contract is in writing, signed by the workman; and

- (b) the contract specifies the acts or omissions in respect of which the fine may be imposed, and the amount of the fine or the particulars from which that amount may be ascertained ; and
- (c) the fine imposed under the contract is in respect of some act or omission which causes or is likely to cause damage or loss to the employer, or interruption or hindrance to his business ; and
- (d) the amount of the fine is fair and reasonable having regard to all the circumstances of the case.

59 & 60 Vict.  
c. 44.

Truck Act,  
1896.

(2.) An employer shall not make any such deduction or receive any such payment, unless—

- (a) the deduction or payment is made in pursuance of, or in accordance with, such a contract as aforesaid ; and
- (b) particulars in writing showing the acts or omissions in respect of which the fine is imposed and the amount thereof are supplied to the workman on each occasion when a deduction or payment is made.

(3.) This section shall apply to the case of a shop assistant in like manner as it applies to the case of a workman.

2.—(1.) An employer shall not make any contract with any workman for any deduction from the sum contracted to be paid by the employer to the workman, or for any payment to the employer by the workman for or in respect of bad or negligent work or injury to the materials or other property of the employer, unless—

Deductions or  
payments in  
respect of  
damaged  
goods.

- (a) the terms of the contract are contained in a notice kept constantly affixed at such place or places open to the workmen and in such a position that it may be easily seen, read, and copied by any person whom it affects ; or the contract is in writing, signed by the workman ; and
- (b) the deduction or payment to be made under the contract does not exceed the actual or estimated damage or loss occasioned to the employer by the act or omission of the workman, or of some person over whom he has control, or for whom he has by the contract agreed to be responsible ; and
- (c) the amount of the deduction or payment is fair and reasonable, having regard to all the circumstances of the case.

(2.) An employer shall not make any such deduction or receive any such payment unless—

- (a) the deduction or payment is made in pursuance of, or in accordance with, such a contract as aforesaid ; and
- (b) particulars in writing showing the acts or omissions in respect of which the deduction or payment is made and the amount thereof are supplied to the workman on each occasion when a deduction or payment is made.

3.—(1.) An employer shall not make any contract with any workman for any deduction from the sum contracted to be paid by the employer to the workman, or for any payment to the employer by the workman for, or in respect of, the use or supply of materials, tools or machines, standing room, light, heat, or for or in respect of any other thing to be done or provided by the employer in relation to the work or labour of the workman unless—

Deductions or  
payments in  
respect of  
materials.

- (a) the terms of the contract are contained in a notice kept constantly affixed at such place or places open to workmen, and in such a position that it may be easily seen, read, and copied by any person whom it affects ; or the contract is in writing, signed by the workman ; and

59 & 60 Vict.  
c. 44.

Truck Act,  
1896.

(b) the sum to be paid or deducted under the contract in respect of materials, tools or machines, standing room, light, heat, or any other thing, does not exceed, in the case of materials or tools supplied to the workman, the actual or estimated cost thereof to the employer, or in the case of the use of machinery, light, heat, or any other thing in this section mentioned, a fair and reasonable rent or charge, having regard to all the circumstances of the case.

(2.) An employer shall not make any such deduction or receive any such payment unless—

(a) the deduction or payment is made in pursuance of, and in accordance with, such a contract as aforesaid; and

(b) particulars in writing showing the things in respect of which the deduction or payment is made and the amount thereof are supplied to the workman on each occasion when a deduction or payment is made.

Penalty—  
1 & 2 Will. 4,  
c. 37.

4. If any employer enters into any contract contrary to this Act, or makes any deduction or receives any payment contrary to this Act, he shall be guilty of an offence against the Truck Act, 1831, and shall be liable to the penalties imposed by section nine of that Act, as if the offence were an offence in that section mentioned.

Recovery of  
payments or  
deductions.

5. Any workman or shop assistant may recover any sum deducted by or paid to his employer contrary to this Act, provided that proceedings for such recovery are commenced within six months from the date of the deduction or payment sought to be recovered, and that where he has consented to or acquiesced in any such deduction or payment, he shall only recover the excess which has been deducted or paid over the amount, if any, which the court may find to have been fair and reasonable, having regard to all the circumstances of the case.

Production of  
contract.

6.—(1.) Every employer who has made any contract purporting or intending to operate as a contract under this Act, shall, on demand in writing by one of Her Majesty's inspectors of factories or of mines, produce the contract or a true copy thereof at any convenient time and place to be named by the inspector, and the inspector shall be at liberty to take a copy of the same or of any part thereof, and the employer of any workman or shop assistant who is party to any such contract shall at the time of making the contract give the workman or shop assistant a copy of the contract or of the notice containing its terms.

(2.) A workman or shop assistant who is party to any such contract shall be entitled, on request, to obtain from his employer free of charge a copy of the contract or of the notice containing its terms.

(3.) Every employer who has made any contract purporting or intending to operate as a contract under section one of this Act shall keep a register of deductions or payments, and shall enter therein every deduction or payment for or in respect of any fine purporting to be made under any such contract, specifying the amount and the nature of the act or omission in respect of which the fine was imposed, and this register shall be at all times open to inspection by one of Her Majesty's Inspectors of Factories or of Mines.

(4.) If any person fails to comply with this section he shall be liable on summary conviction to a fine not exceeding forty shillings.

Exemption of  
contract from  
stamp duty.  
Saving as to  
contracts and

7. A contract entered into under the provisions of this Act shall not be liable to stamp duty.

8. Nothing in this Act shall make lawful any contract or payment

which is illegal under the Truck Acts, 1831 and 1887, or under the 59 & 60 Vict. Hosiery Manufacture (Wages) Act, 1874, or affect the provisions of the c. 44. Coal Mines Regulation Act, 1887, or any amending Act, with respect to persons employed in mines and paid according to weight, or make lawful any deduction from payments made to those persons. *Truck Act, 1896.*

9.—(1.) The Secretary of State, if satisfied that the provisions of this Act are unnecessary for the protection of the workmen employed in any trade or business, or in any branch or department of any trade or business, either generally or within any specified area, may by order under his hand grant an exemption from those provisions in respect of the persons engaged in that trade, business, branch or department, either generally or within that area. *payments illegal under existing Acts —1 & 2 Will. 4, c. 37— 50 & 51 Vict. c. 46—37 & 38 Vict. c. 48— 50 & 51 Vict. c. 58.*

(2.) The Secretary of State may at any time amend or revoke any such order.

(3.) Every order made under this section shall be laid as soon as may be before both Houses of Parliament, and if either House within the next forty days after the order has been so laid before that House resolves that the order ought to be annulled, the order shall, after the date of that resolution, be of no effect, without prejudice to the validity of anything done in the meantime under the order or to the making of a new order. *Power to exempt from provisions of Act.*

10. Sub-section two of section thirteen of the Truck Amendment Act, 1887 (which relates to the duties of inspectors), shall apply in the case of a laundry, and in the case of any place where work is given out by the occupier of a factory or workshop, or by a contractor, or sub-contractor, in like manner as it applies in the case of a factory. *Duties of inspectors— —50 & 51 Vict. c. 46.*

11. This Act shall come into operation on the first day of January one thousand eight hundred and ninety-seven. *Commence- ment.*

12. This Act may be cited as “The Truck Act, 1896”; and the Truck Acts, 1831 and 1887, and this Act shall be construed together as one Act and may be cited collectively as “The Truck Acts, 1831 to 1896.” *Short title and construction.*

## LARCENY ACT, 1896.

59 & 60 VICT. CAP. 52.

*An Act to amend the Law with respect to the Jurisdiction exercisable in Cases relating to the Receipt or Possession of Stolen Property.— [14th August, 1896.]*

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1.—(1.) If any person without lawful excuse receives, or has in his possession, any property stolen outside the United Kingdom, knowing such property to have been stolen, he shall be liable to penal servitude for any term not less than three years and not more than seven years, or to imprisonment for a term not exceeding two years, with or without hard labour, and may be indicted in any county or place in which he has, or has had, the property. *Punishment for receipt or possession of property stolen abroad —24 & 25 Vict. c. 96.*



- 59 & 60 VICT.  
c. 52.  
—  
*Larceny Act,*  
1896.  
—
- (2.) For the purposes of this section property shall be deemed to have been stolen where it has been taken, extorted, obtained, embezzled, converted, or disposed of, under such circumstances that, if the act had been committed in the United Kingdom, the person committing it would have been guilty of an indictable offence according to the law for the time being of the United Kingdom.
- (3.) An offence under this section shall be a felony or misdemeanour according as the act committed outside the United Kingdom would have been a felony or misdemeanour if committed in England or Ireland.
- (4.) This section shall be construed and have effect as part of the Larceny Act, 1861.
- Short title      2. This Act may be cited as "The Larceny Act, 1896." and the Larceny Act, 1861, and this Act may be cited together as "The Larceny Acts, 1861 and 1896."

### WILD BIRDS PROTECTION ACT, 1896.

59 & 60 VICT. CAP. 56.

*An Act to amend the Wild Birds Protection Acts.*—[14th August, 1896.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

- Extension of powers under 43 & 44 Vict. c. 35.      1. From and after the passing of this Act the powers exercisable by the Secretary of State on application under section eight of the Wild Birds Protection Act 1880, shall extend to the making of an order prohibiting, for special reasons mentioned in the application, the taking or killing of particular kinds of wild birds during the whole or any part of that period.
- Publication of orders.      2. Public notice of any order made under this Act shall be given in the manner required by the Wild Birds Protection Act 1894, with respect to orders made under that Act.
- Explanation of 57 & 58 Vict. c. 24.      3. The powers exercisable under the Wild Birds Protection Act, 1894, by the county council of an administrative county are hereby declared to be exercisable by the council of a county borough, and any expenses incurred by the council of a county borough under that Act or this Act may be defrayed out of the borough fund or borough rate.
- Power to forfeit traps, nets, snares, &c.      4. Where any person is convicted of an offence against this Act or the principal Act, the court may, in addition to any penalty that may be imposed, order any trap, net, snare, or decoy bird used by such person for taking any wild bird to be forfeited.
- Application to Scotland.      5. This Act shall apply to Scotland with the substitution of the Secretary for Scotland for a Secretary of State.
- Extent of Act.      6. This Act shall not extend to Ireland.
- Short title and collective title.      7. This Act may be cited as "The Wild Birds Protection Act," 1896, and shall be construed with the Wild Birds Protection Act, 1880, the Wild Birds Protection Act, 1881, and the Wild Birds Protection Act, 1894, and those Acts and this Act may be cited collectively as "The Wild Birds Protection Acts, 1880 to 1896."

## BURGLARY ACT, 1896.

59 &amp; 60 VICT. CAP. 57.

*An Act to provide for the Trial of Burglaries by Courts of Quarter Sessions.*—[14th August, 1896.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1.—(1.) A court of quarter sessions shall, notwithstanding anything in the Quarter Sessions Act, 1842, have jurisdiction to try a person charged with burglary. Trial of burglaries at quarter sessions—

(2.) A justice of the peace when committing for trial a person charged with burglary shall, nevertheless, commit him for trial before a court of assize unless, owing to the absence of any circumstances which make the case a grave or difficult one, he thinks it expedient, in the interests of justice, to commit him for trial before a court of quarter sessions; and the Assizes Relief Act, 1889, shall apply. 52 & 53 Vict. c. 12.

2.—(1.) The Act of the session of the fifth and sixth years of the reign of Her present Majesty, chapter thirty-eight, intituled "An Act to define the jurisdiction of justices in general and quarter sessions of the peace," is in this Act referred to, and may be cited, as "The Quarter Sessions Act, 1842." Short title—5 & 6 Vict. c. 38.

(2.) This Act may be cited as "The Burglary Act, 1896."

(3.) This Act shall not extend to Scotland or Ireland.

Extent of Act.

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**STATUTES AND PARTS OF STATUTES  
AFFECTING THE CRIMINAL LAW,  
PASSED IN THE SESSION OF PARLIAMENT OF 1897.**

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**METROPOLITAN POLICE COURTS (HOLIDAYS) ACT, 1897.**

60 VICT. CAP. 14.

*An Act for enabling the Metropolitan Police Courts to be closed on Special Bank Holidays.*—[3rd June, 1897.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Power to close  
metropolitan  
police courts  
on Bank  
holidays—  
34 & 35 Vict.  
c. 17.  
Short title.

1. The Secretary of State may, by order, close the metropolitan police courts on any day appointed under section four of the Bank Holidays Act, 1871, to be observed as a Bank holiday.

2. This Act may be cited as "The Metropolitan Police Courts (Holidays) Act, 1897," and may be cited with the Metropolitan Police Acts, 1829 to 1895.

**JURIES DETENTION ACT, 1897.**

60 & 61 VICT. CAP. 18.

*An Act to permit Juries to separate in cases of Felony.*—[15th July, 1897.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Separation of  
juries in cases  
of felony.

1. Upon the trial of any person for a felony other than murder, treason, or treason felony, the court may, if it see fit, at any time before the jury consider their verdict, permit the jury to separate in the same way as the jury upon the trial of any person for misdemeanour are now permitted to separate.

Short title.  
Extent.

2. This Act may be cited as "The Juries Detention Act, 1897."

3. This Act shall not apply to Scotland or Ireland.

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## POLICE (PROPERTY) ACT, 1897.

60 &amp; 61 VICT. CAP. 30.

*An Act to make further provision with respect to the Disposal of Property in the Possession of the Police.*—[6th August, 1897.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1.—(1.) Where any property has come into the possession of the police in connexion with any criminal charge or under section sixty-six of the Metropolitan Police Act, 1839, section forty-eight of the Act of the session of the second and third years of Her present Majesty, chapter ninety-four (local) for regulating the police in the city of London, section one hundred and three of the Larceny Act, 1861, or section thirty-four of the Pawnbrokers Act, 1872, a court of summary jurisdiction may, on application either by an officer of police or by a claimant of the property, make an order for the delivery of the property to the person appearing to the magistrate or court to be the owner thereof, or, if the owner cannot be ascertained, make such order with respect to the property as to the magistrate or court may seem meet.

Power to make orders with respect to property in possession of police—2 & 3 Vict. c. 47. -- 2 & 3 Vict. c. xciv.— 24 & 25 Vict. c. 96—35 & 36 Vict. c. 98

(2.) An order under this section shall not affect the right of any person to take within six months from the date of the order legal proceedings against any person in possession of property delivered by virtue of the order for the recovery of the property, but on the expiration of those six months the right shall cease.

(3.) In any part of the metropolitan police district for which a police court is established under the Metropolitan Police Court Acts, 1839 and 1840, the powers of a court of summary jurisdiction under this section shall be exercised by a metropolitan police magistrate.

2.—(1.) A Secretary of State may make regulations for the disposal of property which has come into the possession of the police under the circumstances mentioned in this Act in cases where the owner of the property has not been ascertained and no order of a competent court has been made with respect thereto.

Regulations with respect to unclaimed property in possession of police.

(2.) The regulations may authorise the sale of any such property, and the application of the proceeds of any such sale, and the application of any money of which the owner cannot be ascertained, to all or any of the following purposes—

- (a) the expenses of executing the regulations ;
- (b) the payment of reasonable compensation to any person by whom the property has been delivered into the possession of the police ;
- (c) the making of payments for the benefit of discharged prisoners or of persons dependent on prisoners or discharged prisoners ; or,
- (d) such other purposes ; as the Secretary of State may consider expedient.

(3.) Where the property is a perishable article or its custody involves unreasonable expense or inconvenience it may be sold at any time, but the proceeds of sale shall not be disposed of until they have remained in the possession of the police for a year. In any other case the property shall not be sold until it has remained in the possession of the police for a year.

- 60 & 61 VICT. c. 30. (4.) The regulations may also provide for the investment of money and for the audit of accounts.
- Police (Property) Act, 1897. (5.) The regulations shall apply whether the property to which they relate has come into the possession of the police before or after the passing of this Act or the making of the regulations.
- (6.) The regulations shall be laid before Parliament as soon as may be after they are made.
- Extent, repeal, and short title—2 & 3 Vict. c. 71. 3.—(1.) This Act shall not extend to Scotland.
- (2.) In the application of this Act to Ireland, the Chief Secretary shall be substituted for the Secretary of State.
- (3.) Sections twenty-nine and thirty of the Metropolitan Police Courts Act, 1839, are hereby repealed.
- (4.) This Act may be cited as “The Police (Property) Act, 1897.”

### MILITARY MANŒUVRES ACT, 1897.

60 & 61 VICT. CAP. 43.

*An Act to facilitate Military Manœuvres.*—[6th August, 1897.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Offences.

7.—(1.) If, within the limits and during the period specified in an Order authorising military manœuvres under this Act, any person—

(a) wilfully and unlawfully obstructs or interferes with the execution of the manœuvres; or

(b) without authority enters or remains in any camp, he shall be liable on summary conviction to a fine not exceeding forty shillings, and he and any animal or vehicle under his charge may be removed by any constable, or by, or by order of, any commissioned officer of the authorised forces.

(2.) If within the limits and during the period aforesaid any person—

(a) without due authority moves any flag or other mark distinguishing, for the purposes of the manœuvres, any lands; or

(b) maliciously cuts or damages any telegraph wire laid down by or for the use of the authorised forces, he shall be liable on summary conviction to a fine not exceeding five pounds.

Short title.

10. This Act may be cited as “The Military Manœuvres Act, 1897.”

### DANGEROUS PERFORMANCES ACT, 1897.

60 & 61 VICT. CAP. 52.

*An Act to extend the Age under which the Employment of Young Persons in dangerous Performances is prohibited.*—[6th August, 1897.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Children's Dangerous Performances Act, 1879, shall apply in the case of any male young person under the age of sixteen years, and any female young person under the age of eighteen years, in like manner as it applies in the case of a child under the age of fourteen years.

60 & 61 VICT.  
c. 52.*Dangerous  
Performance  
Act, 1897.*

2.—(1.) Except where an accident causing actual bodily harm occurs to any child or young person, no prosecution or other proceeding shall be instituted for an offence against the Children's Dangerous Performances Act, 1879, as amended by this Act, without the consent in writing of the chief officer of police of the police area in which the offence is committed.

Extension to  
young persons  
of 42 & 43  
Vict. c. 34.

(2.) For the purposes of this section the expression "chief officer of police,"—

Restrictions  
on prosecu-  
tions—53 & 54  
Vict. c. 45—  
53 & 54 Vict.  
c. 67.

(a) with respect to any place in England other than the City of London, has the meaning assigned to it by the Police Act, 1890;

(b) with respect to the City of London, means the Commissioners of City Police;

(c) with respect to Scotland, has the meaning assigned to it by the Police (Scotland) Act, 1890.

(d) with respect to Ireland, means in the police district of Dublin metropolis either of the Commissioners of Police for that district, and elsewhere the district inspector of the Royal Irish Constabulary.

3. This Act may be cited as "The Dangerous Performances Act, 1897," and the Children's Dangerous Performances Act, 1879, and this Act may be cited together as "The Dangerous Performances Acts, 1879 and 1897."

Short title.

## INFANT LIFE PROTECTION ACT, 1897.

60 &amp; 61 VICT. CAP. 57.

*An Act to amend the Law for the better Protection of Infant Life.*—  
[6th August, 1897.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as "The Infant Life Protection Act, 1897." Short title.

2.—(1.) Any person retaining or receiving for hire or reward in that behalf more than one infant under the age of five years for the purpose of nursing or maintaining such infants apart from their parents for a longer period than forty-eight hours, shall within the said forty-eight hours give notice thereof to the local authority.

Persons  
retaining or  
receiving for  
hire infants  
for the pur-  
pose of main-  
tenance to  
give notice  
thereof.

(2.) Such notice shall truly state the name, age, and sex of such infants the name of the person receiving the infants, and the dwelling within which such infants are being kept, and the name and address of the person or persons from whom the infants have been received.

(3.) If any such infant is removed from the care of the person who has received the infant for the purpose aforesaid, such person shall forthwith



60 & 61 Vict. give to the local authority notice of the removal, and of the name  
 a. 57. and address of the person to whose care the infant has been transferred.

—  
*Infant Life  
 Protection  
 Act, 1897.*  
 —

(4.) If any person who has retained or received any infant as aforesaid omits to give the said notices, or any of them, or knowingly or wilfully makes or causes or procures any other person to make any false statement in any such notice, he shall be guilty of an offence against this Act.

Appointment  
 and powers of  
 inspectors, &c.

3. —(1.) It shall be the duty of every local authority to provide for the execution of this Act within its district, and for that purpose it shall from time to time make inquiry whether there are any persons residing therein who retain or receive infants for hire or reward within the provisions of the preceding section.

(2.) A local authority may, if it think fit, appoint male or female inspectors to enforce this Act, and if any such persons retaining or receiving infants as aforesaid are found in its district, it shall either appoint such inspectors or arrange for the infants being visited by women nominated by the local authority and authorised by it in writing to enforce the provisions of this Act.

(3.) A local authority, may, if it think fit, appoint or authorise in writing other suitable persons to execute the provisions of this Act, subject to such terms and conditions as may be stated in such appointment or authorisation.

(4.) Any local authority may combine with any other local authority for the purpose of executing the provisions of this Act, and for defraying the expenses of such execution.

(5.) Any inspector or other person duly appointed and authorised in writing by or on behalf of the local authority shall from time to time inspect any infants referred to in any notice given under this Act, and the premises in which they are retained or received, in order to satisfy himself as to the proper maintenance of such infants or to give any necessary advice or directions as to such maintenance.

(6.) If any person retaining or receiving such infants refuses to allow any such inspector or other person to inspect such infants or the premises in which they are retained or received he shall be guilty of an offence against this Act.

(7.) If any such inspector or other person is refused admittance to any premises in contravention of this Act, or has reason to believe that any infants under the age of five years are being kept in any house or premises in contravention of this Act, he may apply to any stipendiary magistrate or to any two justices of the peace, who, on being satisfied, on information in writing made before him or them on oath, that there is reasonable ground for believing that an offence against this Act has been committed, may grant a warrant authorising such inspector or other person to enter the house or premises for the purpose of inspection or of ascertaining whether any offence against this Act has been committed, and if the occupier of the house or premises or other person obstruct any inspector or other person acting in pursuance of such warrant, he shall be guilty of an offence against this Act.

Local autho-  
 rity to fix  
 number of  
 infants which  
 may be  
 retained.

4. It shall be the duty of the local authority to fix the number of infants under the age of five years which may be retained or received in any dwelling in respect of which notice has been received under this Act, and any person retaining or receiving any infant in excess of the number so fixed, shall be guilty of an offence against this Act.

Notice to be  
 given to local

5. Any person retaining or receiving an infant under the age of two years

on consideration of a sum of money not exceeding twenty pounds paid down, and without any agreement for further payment, as value for the care and bringing up of the said infant until it is reclaimed or of an age to provide for itself, shall within forty-eight hours from the time of receiving such infant give notice of the fact to the local authority. If he does not give the notice required by this section, he shall be liable to forfeit the amount of any sum received by him in respect of such infant, or such less sum as the court having cognisance of the case shall deem just, and the court shall give directions as to the manner in which the sum forfeited shall be applied for the benefit of the infant, and shall, if necessary, cause the infant to be removed to a workhouse or place of safety until it can be otherwise lawfully disposed of.

60 & 61 Vict.  
c. 57.

—  
*Infant Life  
Protection  
Act, 1897*  
—

authority by  
person receiv-  
ing an infant  
for not more  
than 20 $\frac{1}{2}$  paid  
down.

6. It shall be the duty of the local authority to give public notice of the provisions of this Act by the publication of an abstract thereof or otherwise as a Secretary of State may direct.

Notice of pro-  
visions of Act.

7.—(1.) Should any infant, in respect of which notice is required to be given under this Act,—

Removal of  
infant im-  
properly kept

(a) be kept in any house or premises which are so unfit or so overcrowded as to endanger its health ; or

(b) be retained or received by any person who, by reason of negligence, ignorance, or other cause, is so unfit to have its care and maintenance as to endanger its health ;

any inspector or other person appointed for the purposes of this Act may apply to the local authority for an order in writing directing him to remove such infant to a workhouse or place of safety, until it can be restored to its relatives or guardians or be otherwise lawfully disposed of.

(2.) Any person refusing to comply with an order under this section upon the same being produced and read over to him, or obstructing the inspector or other authorised person in the execution thereof, shall be guilty of an offence under this Act, and the inspector may apply to any justice of the peace for an order directing the removal of the child, and such order may be enforced by any police constable.

(3.) The master of any workhouse shall receive into the workhouse any child brought there under such order, and such child shall be maintained in the workhouse until it can be otherwise disposed of.

(4.) No infant shall be retained or received for hire or reward by any person from whose care any infant has been removed under this section or by any person convicted of any offence under the Prevention of Cruelty to and Protection of Children Acts, unless with the sanction in writing of the local authority ; and any person retaining or receiving any infant contrary to this section shall be guilty of an offence against this Act.

8. In case of the death of any infant respecting whom notice is required under this Act, the person having the care of such infant shall, within twenty-four hours of such death, cause notice thereof to be given to the coroner of the district within which the body of such infant lies, and the coroner shall hold an inquest thereon, unless a certificate under the hand of a registered medical practitioner shall be produced to him, certifying that such registered medical practitioner has personally attended or examined such infant, and specifying the cause of its death, and the coroner shall be satisfied by such certificate that there is no ground for holding such inquest. If the person having the care of such infant shall neglect to give the notice in this section mentioned he shall be guilty of an offence against this Act.

Notice to  
coroner

60 & 61 Vict.  
c. 57.

*Infant Life  
Protection  
Act, 1897.*

Penalties.  
Expenses.  
Prosecution  
of offences.  
Application  
of fines.

Notices to  
local autho-  
rity.

Exemptions.

Definitions

Application to  
Scotland.

Application to  
Ireland.

Repeal 35 & 36  
Vict. c. 38.

Commence-  
ment of Act.

9. Every person guilty of an offence under this Act shall be liable to a penalty not exceeding five pounds, or to imprisonment for not more than six months, as a court of summary jurisdiction may award.

10. All expenses incurred by or on behalf of the local authority in and about the execution of this Act shall be defrayed out of the local rate.

11. Any offence under this Act may be prosecuted and any forfeiture recovered before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

12. Any moneys arising from penalties under this Act shall, notwithstanding any provision in any other Act, be paid to the local authority, and be applied to the purposes to which the local rate is applicable.

13. Every notice by this Act required to be given to the local authority shall be in writing, and shall be sent by post as a registered letter to the clerk of the local authority, or to such other person as the local authority may appoint, or be delivered at the office of the local authority.

14. The provisions of this Act shall not extend to the relatives or guardians of any infant by them retained or received as aforesaid, or to any person receiving any infant for the purpose of nursing or maintaining such infant under the provisions of any Act for the relief of the poor or of any order of the Local Government Board made under such Act; or to hospitals, convalescent homes, or institutions established for the protection and care of infants and conducted in good faith for religious or charitable purposes.

15. The terms "local rate," "local jurisdiction," and "local authority," mean in reference to the districts mentioned in the first column of the schedule to this Act, the rate, jurisdiction, and authority mentioned in the second, third, and fourth columns of the said schedule, and such schedule shall be deemed to be part of this Act. The term "place of safety" shall mean any suitable place, the occupier of which is willing temporarily to receive such infant. The term "relatives" shall mean and include the parents, grandparents, and uncles, and aunts, by consanguinity or affinity, of the infant retained or received as aforesaid, and in the case of illegitimate infants the persons who would be so related if the infant were legitimate.

16. This Act in its application to Scotland shall be subject to the following provisions: The Secretary for Scotland shall be substituted for the Secretary of State; the Local Government Board for Scotland shall be substituted for the Local Government Board; the sheriff shall be substituted for a justice of the peace; the procurator fiscal shall be substituted for the coroner; and an inquiry by him into the cause of death for an inquest; the poorhouse shall be substituted for the workhouse; the inspector of poor shall be substituted for inspector; and the powers and duties which by section three hereof are conferred and imposed upon the inspector or other authorised person shall be conferred and imposed upon the inspector of poor.

17. In the application of this Act to Ireland, the Chief Secretary shall be substituted for a Secretary of State, and the Local Government Board for Ireland shall be substituted for the Local Government Board.

18. The Infant Life Protection Act, 1872, shall be repealed from the date of the commencement of this Act.

19. This Act shall commence on the first day of January one thousand eight hundred and ninety-eight.

SCHEDULE referred to in the foregoing Act.  
ENGLAND AND WALES.

60 & 61 VICT.  
c. 57.  
*Infant Life  
Protection  
Act, 1897.*

District.	Local Rate.	Local Jurisdiction.	Local Authority.
County of London.	Rate or fund applicable to the payment of the general expenses of the Council.	Area of the County of London (except the City of London).	London County Council
City of London.....	Consolidated sewers fund.	Area of the City of London and the liberties thereof.	Common Council
Other places .....	Rate or fund applicable to the general expenses of the guardians.	The poor law union.	The board of guardians.
SCOTLAND.			
Parish .....	The poor rate .....	Area of parish ...	Parish council.
IRELAND.			
In all places .....	The poor rate .....	The poor law union.	The board of guardians.

CHAFF-CUTTING MACHINES (ACCIDENT) ACT, 1897.

60 & 61 VICT. CAP. 60.

*An Act for the Prevention of Accidents by Chaff-Cutting Machines.—*  
[6th August, 1897.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. The feeding mouth or box of every chaff-cutting machine which is worked by any motive power other than manual labour shall, so far as is reasonably practicable and consistent with the due and efficient working of the machine, be of such construction or fitted with such apparatus or contrivance as to prevent the hand or arm of the person feeding the machine from being drawn between the rollers to the knives.
2. The fly-wheel and knives of every chaff-cutting machine which is worked by any motive power other than manual labour, shall, so far as is reasonably practical and consistent with the due and efficient working of the machine, be kept sufficiently and securely fenced at all times during the working thereof.
3. If any person permits to be worked any chaff-cutting machine belonging to him or used for his service or benefit, which does not comply with the requirements of this Act,  
or if any foreman or other person in charge of any chaff-cutting machine,

60 & 61 Vict.  
c. 60.

*Chaff-Cutting  
Machines  
(Accident)  
Act, 1897.*

In prosecution,  
owner of machine  
to prove he has  
taken precautions.

Defendant and  
husband or wife  
to be competent  
witnesses.  
Constable may  
enter premises  
for inspecting  
machine.

Commence-  
ment of Act.

Short title.

which does not comply with the requirements of this Act, work it or permits it to be worked,

or if any person, during the working of any chaff-cutting machine, unnecessarily and without due cause removes any guard or thing provided in compliance with the requirements of this Act,

Every person so offending on any day shall be liable on summary conviction to a penalty not exceeding five pounds.

4. If in the prosecution of any person to whom the chaff-cutting machine belongs, or for whose service or benefit it is used, it is shown that the machine did not during the working thereof comply with the requirements of this Act, such person shall be deemed to have permitted the same unless he satisfy the court that he took all reasonable precautions to ensure compliance with the requirements of this Act.

5. Every person charged with an offence under this Act before any court of criminal jurisdiction, and the husband or wife of the person so charged, shall be competent but not compellable witnesses on every hearing at every stage of such charge.

6. Any constable acting upon the instruction of an officer of police not below the grade of inspector may at any time enter on any premises on which he has reasonable cause to believe that a chaff-cutting machine which does not comply with the requirements of this Act is being worked for the purpose of inspecting such machine.

7. This Act shall not come into operation until the first day of August one thousand eight hundred and ninety-eight.

8. This Act may be cited as "The Chaff-Cutting Machines (Accident) Act, 1897."

**STATUTES AND PARTS OF STATUTES  
AFFECTING THE CRIMINAL LAW,  
PASSED IN THE SESSION OF PARLIAMENT OF 1898.**

**BAIL ACT, 1898.**

61 VICT. CAP. 7.

*An Act to amend the Law with respect to Bail.*—[23rd May, 1898.]

Whereas accused persons are sometimes kept in prison for a long time on account of their inability to find sureties, although there is no risk of their absconding, or other reason why they should not be bailed, and it is therefore expedient to amend section twenty-three of the Indictable Offences Act, 1848 : 11 & 12 Vict. c. 42.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. Where a justice has power, under section twenty-three of the Indictable Offences Act, 1848, to admit to bail for appearance, he may dispense with sureties, if, in his opinion, the so dispensing will not tend to defeat the ends of justice. Power to accept bail without sureties.

2. This Act may be cited as "The Bail Act, 1898."

Short title.

**LOCOMOTIVES ACT, 1898.**

61 & 62 VICT. CAP. 29.

*An Act to amend the Law with respect to the use of Locomotives on Highways, and with respect to extraordinary traffic.*—[2nd August, 1898.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows :

1.—(1.) The council of a municipal borough as regards any highway situate in the borough and the county council as regards any highway situated in their county but not in a borough, may permit any waggons drawn or propelled by a locomotive on the highway to carry weights in excess of those mentioned in section four of the Locomotive Act, 1861. Provisions as to the weight carried by waggons—  
24 & 25 Vict. c. 70—41 & 42 Vict. c. 77.

(2.) If any person without such permission uses any waggon drawn or propelled by a locomotive on any highway to carry weights in excess of those mentioned in section four of the Locomotive Act, 1861, as amended by this Act, or being the owner of the waggon, permits it to be so used, that person shall be liable for each offence, on summary conviction, to a fine not exceeding ten pounds.



61 & 62 Vict.  
c. 29.

Locomotives  
Act, 1898.

Weight of  
waggon to be  
affixed  
thereon.

Limit to  
number of  
waggon.

Erection and  
use of weigh-  
ing machines  
—52 & 53  
Vict. c. 49—  
38 & 39 Vict.  
c. 55.

Regulations  
for loco-  
tives passing  
on highways

(3.) The proviso to section four of the Locomotives Act, 1861, is hereby repealed, and in lieu thereof it is enacted as follows:

Provided that the regulation of weight herein mentioned shall not extend to any waggon carrying only one block plate, cable, roll, vessel of stone or metal, or other single article, being of greater weight than sixteen tons, but the fellies, tires, or shoes of such waggon shall not be less than eight inches in breadth, and any damage arising from the user of any such waggon shall be deemed to be damage caused by excessive weight within the meaning of section twenty-three of the Highways and Locomotives Amendment Act, 1878. as amended by this Act.

2. The weight unloaded of every waggon drawn or propelled by a locomotive shall be conspicuously and legibly affixed thereon, and every owner not having affixed such weight shall be liable for each offence, on summary conviction, to a fine not exceeding five pounds, and any owner who shall fraudulently affix thereon any incorrect weight shall be liable for each offence, on summary conviction, to a fine not exceeding ten pounds.

3.—(1.) A locomotive shall not be used on any highway to draw more than three loaded waggons (exclusive of any waggon solely used for carrying water for the locomotive) without the consent, so far as regards highways situated in a municipal borough, of the council of the borough, and, so far as regards highways not so situated, of the county council.

(2.) If any person uses a locomotive in contravention of this section, or, being an owner of a locomotive, permits it to be so used, that person shall be liable for such offence, on summary conviction, to a fine not exceeding ten pounds.

4.—(1.) Road authorities shall have power to erect in their district machines for weighing locomotives and loaded waggons drawn by them. and shall have power by their servants to require the persons in charge of such locomotives and waggons to proceed thither for the purpose of having such locomotives and waggons weighed: Provided that the road authority making such requirement shall pay for any loss caused by the delay if the weight should be found to be within the limits authorised by law, and that any person in charge of a locomotive who refuses or neglects to comply with any such requirement, shall be liable for each offence, on summary conviction, to a fine not exceeding ten pounds.

(2.) Where a road authority and the engine owner fail to agree as to the amount of compensation to be paid under this section, the differences between them shall be settled by arbitration under the Arbitration Act, 1889.

Where a road authority weighs locomotives and waggons under this section, a certificate of weight shall be given which shall exempt such locomotives and waggons from being weighed during the continuance of that journey.

(3.) For the purposes of this section the council of any county borough and any district council may borrow under and subject to the provisions of the Public Health Act, 1875.

5.—(1.) When a locomotive is passing on any highway—

(a) two persons shall be employed in driving or attending to the locomotive; and

(b) in the case of any locomotive not being a steam roller, another person shall be employed to accompany the locomotive in such a

manner as to be able to give assistance to any person with horses or carriages drawn by horses meeting or overtaking the locomotive, and shall give such assistance when required; and

- (c) when a locomotive is drawing more than three waggons, another person shall be employed for the purpose of attending to the waggons:

Provided that it shall not be necessary in the case of two locomotive plough engines (including their necessary gear) closely following one another, to employ more than five persons in all under the foregoing enactment, but one of these persons shall be employed to accompany the engines and give assistance in manner thereby required.

(2.) So long as the fires of a locomotive are alight, or the locomotive contains in itself sufficient motive power to move it, one person shall remain in attendance whilst it is on any highway, although it is stationary.

(3.) The lights required to be carried on a locomotive, whether stationary or passing on any highway, shall be carried between the hours of one hour after sunset and one hour before sunrise during the six months beginning the first day of April in any year, and between sunset and sunrise during the six months beginning the first day of October in any year, and there shall be carried in addition during those hours an efficient red light on the rear of the locomotive, or if it is drawing waggons on the rear of the last waggon, fixed in such a manner as to be conspicuous.

(4.) Every light carried on a locomotive, or on a waggon drawn by a locomotive, shall be fitted with such shutters or other contrivances as will enable the light to be temporarily screened in an effective manner.

(5.) If any of the provisions of this section are not complied with in the case of any locomotive, the owner of the locomotive shall be liable for each offence, on summary conviction, to a fine not exceeding ten pounds.

6.—(1.) The council of a county and of any borough containing, according to the census of one thousand eight hundred and eighty-one, a population of ten thousand or upwards, may by bye-law—

- (a) prohibit or restrict the use of locomotives on any specified highway in their county or borough on account of the highway being crowded or unfitted for locomotive traffic, or of the inconvenience caused to inhabitants, or of any other reasonable cause; and
- (b) regulate the use of locomotives and of waggons drawn by locomotives on any highway; and
- (c) prohibit or restrict the use of a locomotive on any specified bridge in their county or borough, if they are satisfied that such bridge is unsuited for locomotive traffic, or that such use would be attended with damage to the bridge or danger to the public.

Provided that the council of any such county or borough may, where their bye-law prohibits the use of locomotives on any highway, give special authority for the use of a locomotive on the highway, if in any case it appears necessary for the purpose of delivery of goods or for any other particular purpose. Provided also that the council of any such county or borough shall not give any such special authority for the use of a locomotive on any bridge except with consent of the person liable to the repair of such bridge, and the council of any such county or borough may with such consent give such special authority subject to payment being made by the person applying for such special authority to the

61 & 62 Vict.  
c. 29.

Locomotives  
Act, 1898.

Restriction of  
locomotive  
traffic by bye-  
law.—38 & 39  
Vict. c. 55.

61 & 62 Vict. person liable to the repair of such bridge of the cost of temporarily  
c. 29. strengthening such bridge on each occasion of such use.

Locomotives  
Act, 1898.

(2) If any person in charge of a locomotive acts in contravention of any bye-law under this section, and without any such special authority, he shall be liable for each offence, on summary conviction, to a fine not exceeding five pounds.

(3.) Any bye-law made under this section shall be subject to confirmation by the Local Government Board, and sections one hundred and eighty-four, one hundred and eighty-five, and one hundred and eighty-six of the Public Health, 1875 (which relate to the confirmation, printing, and evidence of bye-laws), shall accordingly apply to any bye-laws under this section as they apply to bye-laws made by a local authority under that Act. Provided that, in addition to the notice of intention to apply for confirmation of any bye-law which is required by section one hundred and eighty-four of the said Act, notice of such intention shall in the case of any bye-law made under this section be given in the *London Gazette* one month at least before making the application.

(4.) The Local Government Board in connection with the confirmation of any bye-law under this section shall have all proper regard to the necessities of through locomotive traffic, and of persons who own or use locomotives, and shall consider any representations made to them by any local authority concerned, and shall also have regard to the advantage of bye-laws being uniform in adjoining areas except where uniformity is, in their opinion, made inexpedient by difference in the circumstances of the areas.

(5.) The mayor, aldermen, and commons of the city of London may make bye-laws under this section as to the city of London in the same manner as the council of a borough.

(6.) For the purpose of bye-laws under this section a borough, the council of which may make such bye-laws, shall not form part of the administrative county in which it is situate.

Locomotives  
not to meet on  
a bridge 8. No locomotive shall be taken across any bridge so as to meet or pass any other locomotive upon such bridge, and any person who acts in contravention of this section shall be subject, on summary conviction, to a penalty not exceeding five pounds for every offence.

Licences for  
locomotives. 9.—(1.) Every locomotive shall be licensed by a county council, provided that this enactment shall not apply to any agricultural locomotive, to any locomotive not used for haulage purposes, to any steam roller, or to any locomotive belonging to a road authority when used by them within their district.

(2.) The licence shall be taken out in the county in which the locomotive is at the time ordinarily used, or to be used, and shall remain in force for one year from the date on which it is granted and no longer: Provided that, if any question arises as to the county in which a licence is to be taken out under this section, such question shall be determined by agreement between the chairmen of the councils of the counties concerned or in case of their failing to agree by an arbitrator appointed by them, or in their default by the Local Government Board.

(3.) The council of a county shall grant a licence under this section on the payment of a fee not exceeding ten pounds if the weight of the locomotive (exclusive of water and coal) is not more than ten tons, with an addition not exceeding two pounds for every ton or fraction of a ton by which that weight exceeds ten tons in the case of a locomotive exceeding that weight.

(4.) The council of a county shall on the grant of a licence provide the person to whom the licence is granted with a licence plate, having marked upon it the date and number of the licence and the name of the council by which it is granted.

61 & 62 Vict.  
c. 29.  
—  
*Locomotives  
Act, 1898.*  
—

(5.) The licence plate shall be fixed in a conspicuous position to the locomotive in respect of which it is provided, and shall not be removed whilst the licence is in force, without the consent of the council by whom the licence has been granted.

(6.) A licence may, with the consent of the council by which it has been granted, be transferred from one locomotive to another locomotive belonging to the same owner.

(7.) Where a locomotive is licensed in accordance with this section in any county, an additional licence may be taken out in any other county in the same manner and subject to the same provisions as in the case of the original licence, except that such additional licence shall expire on the same date as the original licence, and except that with regard to the payment to be made for licences a fee not exceeding five pounds, and an addition not exceeding one pound for an addition not exceeding two pounds.

(8.) A locomotive in respect of which such an additional licence granted under this section by the council of any county is in force shall for the purpose of the use of the locomotive in that county be deemed to be licensed in that county.

(9.) A locomotive shall not be used on any highway in a county in which it is not licensed, except on payment to the council of the county of a fee not exceeding two shillings and sixpence for each day on which it is so used.

(10.) If any person—

(a) uses on any highway a locomotive which is required to be, but is not, licensed in accordance with this section; or

(b) uses a locomotive on any highway in a county in which the locomotive is not licensed without payment of the fee required by this section; or

(c) fails to affix the licence plate to a locomotive in accordance with this section, or removes it in contravention thereof,

that person shall be liable for each offence, on summary conviction, to a fine not exceeding ten pounds.

(11.) Any sums received on account of fees under this section, shall be carried to the county fund.

10.—(1.) All locomotives not required to be licensed under this Act shall be registered in the county in which they are ordinarily used or to be used in such manner as the county council may direct.

*Agricultural  
locomotives  
and steam  
rollers.*

(2.) The county council may charge such a fee not exceeding two shillings and sixpence for registration under this section as they think fit, and on registration shall provide the person applying for registration with a plate with the registered number marked upon it.

(3.) The plate shall be fixed in a conspicuous position to the locomotive in respect of which it is provided, and shall not be removed without the consent of the council by whom the locomotive is registered.

(4.) If any person—

(a) uses on any highway a locomotive which is required to be but is not registered in accordance with this section; or

61 & 62 VICT.  
c. 29.

Locomotives  
Act, 1898.

Penalty for  
forging licence  
or registration  
plate.

Power of  
owner of  
locomotive to  
exempt him-  
self from fine  
on the convic-  
tion of the  
actual  
offender.

Action of  
county  
councils.  
Repeal.

Short title.  
Application of  
Act.  
Commence-  
ment of Act.

(b) fails to affix the registration plate in accordance with this section, or removes it in contravention thereof,

that person shall be liable for each offence, on summary conviction, to a fine not exceeding five pounds.

(5.) Any sums received on account of fees for registration under this section shall be carried to the county fund.

(6.) This section shall not apply in the case of the use by any road authority of steam rollers belonging to them within their district.

11. Every person who shall forge, counterfeit, or tamper with, or who shall cause or procure to be forged, counterfeited, or tampered with, any licence plate or registration plate, or who shall knowingly use any locomotive having thereon a licence plate or registration plate which has been forged, counterfeited, or tampered with, shall be liable, on summary conviction, to pay a fine not exceeding twenty pounds.

13.—(1) Where an offence under any Act or bye-law relating to locomotives on highways, for which the owner of a locomotive or waggon is liable to a penalty has, in fact, been committed by some servant, workman, or other person, that servant, workman, or other person shall be liable to the same penalty as if he were the owner.

(2.) Where the owner is charged with any such offence, he shall be entitled upon information duly laid by him to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge, and if, after the commission of the offence has been proved, the owner proves to the satisfaction of the court that he had used due diligence to enforce the execution of the Act, and that the other person had committed the offence in question without the owner's knowledge, consent, or connivance, that other person shall be summarily convicted of the offence, and the owner shall be exempt from any fine.

14. For the purposes of this Act the council of a county or borough may act through their surveyor or other authorised officer.

18.—(1.) The Acts mentioned in the schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule.

(2.) Provided that such repeal shall not affect any bye-laws made under any enactment mentioned in the said schedule, so far as the same relate to preventing the use of locomotives upon bridges, or for a period of twelve months from the passing of this Act any other bye-laws made under any such enactment, except so far as the same may be repealed or altered by bye-laws made under this Act.

(3.) Nothing in this Act shall affect or derogate from the provisions of any local Act dealing with the licensing of locomotives (whatever the payments in respect of licence may be) or otherwise relating to locomotives in any borough or other area.

19. This Act may be cited as "The Locomotives Act, 1898."

20. This Act shall not apply to Scotland or Ireland.

This Act shall not, except so far as regards the making and confirming of bye-laws hereunder come into operation until the first of January. one thousand eight hundred and ninety-nine.

SCHEDULE.  
REPEALS.61 & 62 VICT.  
c. 29.Locomotives  
Act, 1898.

Session and Chapter.	Short Title.	Extent of Repeal.
24 & 25 Vict. c. 70.	The Locomotive Act, 1861.	Section six from "And in case" to the end of the section.
28 & 29 Vict. c. 83.	The Locomotives Act, 1865.	Section three, the paragraph commencing with the word "Firstly" and ending with the word "carriages" and from "but it shall be lawful for such owner" to the end of the section.
41 & 42 Vict. c. 77.	The Highways and Locomotives (Amendment) Act, 1878.	Section three, the words "between the hours of one hour after sunset and one hour before sunrise." Sections twenty-nine, thirty-one, and thirty-two.

## METROPOLITAN POLICE COURTS ACT, 1898.

61 &amp; 62 VICT. CAP. 31.

*An Act to amend the Metropolitan Police Courts Act, 1897.*—[2nd August, 1898.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. Nothing in section six of the Metropolitan Police Courts Act, 1897, shall affect the application of any fines, pecuniary penalties, and forfeitures, which under any other Act are payable to the informer or to the party aggrieved, or to a police pension fund, or which are recoverable under any of the Acts relating to the Customs or Inland Revenue, or to the Post Office, or Trade or Navigation, or under the Factory Acts, or which when recovered are to be applied as an excise penalty.

Amendment  
of 60 & 61  
Vict. c. 26,  
s. 1, as to  
certain fines.

2. This Act may be cited as "The Metropolitan Police Courts Act, 1898," and may be cited with the Metropolitan Police Acts, 1829 and 1897, and shall be deemed to have come into operation on the first day of April one thousand eight hundred and ninety-eight.

Short title.

## CRIMINAL EVIDENCE ACT, 1898.

61 &amp; 62 VICT. CAP. 36.

*An Act to amend the Law of Evidence.*—[12th August, 1898.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in



61 & 62 Vict. this present Parliament assembled, and by the authority of the same, as  
c. 36. follows :

*Criminal  
Evidence Act,*  
1898.

Competency  
of witnesses  
in criminal  
cases—

11 & 12 Vict.  
c. 42.

1. Every person charged with an offence, and the wife or husband, as the case may be, of the person so charged, shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person. Provided as follows:—

(a.) A person so charged shall not be called as a witness in pursuance of this Act except upon his own application :

(b.) The failure of any person charged with an offence, or of the wife or husband, as the case may be, of the person so charged, to give evidence shall not be made the subject of any comment by the prosecution :

(c.) The wife or husband of the person charged shall not, save as in this Act mentioned, be called as a witness in pursuance of this Act except upon the application of the person so charged :

(d.) Nothing in this Act shall make a husband compellable to disclose any communication made to him by his wife during the marriage, or a wife compellable to disclose any communication made to her by her husband during the marriage :

(e.) A person charged and being a witness in pursuance of this Act may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged :

(f.) A person charged and called as a witness in pursuance of this Act shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that wherewith he is then charged, or is of bad character, unless—

(i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged ; or

(ii) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution ; or

(iii) he has given evidence against any other person charged with the same offence.

(g.) Every person called as a witness in pursuance of this Act shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses give their evidence :

(h.) Nothing in this Act shall affect the provisions of sections eighteen of the Indictable Offences Act, 1848, or any right of the person charged to make a statement without being sworn.

Evidence of  
person  
charged.

2. Where the only witness to the facts of the case called by the defence is the person charged, he shall be called as a witness immediately after the close of the evidence for the prosecution.

Right of reply.

3. In cases where the right of reply depends upon the question whether evidence has been called for the defence, the fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right of reply.

- 4.—(1.) The wife or husband of a person charged with an offence under any enactment mentioned in the schedule to this Act may be called as a witness either for the prosecution or defence and without the consent of the person charged.

(2) Nothing in this Act shall affect a case where the wife or husband of a person charged with an offence may at common law be called as a witness without the consent of that person.

5. In Scotland, in a case where a list of witnesses is required, the husband or wife of a person charged shall not be called as a witness for the defence, unless notice be given in the terms prescribed by section thirty-six of the Criminal Procedure (Scotland) Act, 1887.

6.—(1.) This Act shall apply to all criminal proceedings, notwithstanding any enactment in force at the commencement of this Act, except that nothing in this Act shall affect the Evidence Act, 1877.

(2.) But this Act shall not apply to proceedings in courts martial unless so applied—

(a) as to courts martial under the Naval Discipline Act, by general orders made in pursuance of section sixty-five of that Act; and

(b) as to courts martial under the Army Act by rules made in pursuance of section seventy of that Act.

7.—(1.) This Act shall not extend to Ireland.

(2.) This Act shall come into operation on the expiration of two months from the passing thereof.

(3.) This Act may be cited as “The Criminal Evidence Act, 1898.”
- 61 & 62 Vict.  
c. 36.

*Criminal  
Evidence Act,  
1898.*

Calling of wife  
or husband in  
certain cases.  
Application of  
Act to Scot-  
land—50 & 51  
Vict. c. 35.  
Provisions as  
to previous  
Acts—40 & 41  
Vict. c. 14—  
29 & 30 Vict.  
c. 109—  
44 & 45 Vict.  
c. 58.

Extent, com-  
mencement,  
and short title.

SCHEDULE.  
ENACTMENTS REFERRED TO.

Session and Chapter.	Short Title.	Enactments referred to.
5 Geo. 4, c. 83.	The Vagrancy Act, 1824.	The enactment punishing a man for neglecting to maintain or deserting his wife or any of his family.
8 & 9 Vict. c. 83.	The Poor Law (Scotland) Act, 1845.	Section eighty.
24 & 25 Vict. c. 100.	The Offences against the Person Act, 1861.	Sections forty-eight to fifty-five.
45 & 46 Vict. c. 75.	The Married Women's Property Act, 1882.	Section twelve and section sixteen.
48 & 49 Vict. c. 69.	The Criminal Law Amendment Act, 1885.	The whole Act.
57 & 58 Vict. c. 41.	The Prevention of Cruelty to Children Act, 1894.	The whole Act.

VAGRANCY ACT, 1898.

61 & 62 VICT. CAP. 39.

*An Act to amend the Vagrancy Act, 1824.—[12th Aug., 1898.]*

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons,  
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d

61 & 62 VICT. in this present Parliament assembled, and by the authority of the same as follows :

*Vagrancy Act, 1898.* 1.—(1.) Every male person who—  
(a) knowingly lives wholly or in part on the earnings of prostitution:

Persons trading in prostitution—5 Geo. 4, c. 83.

or  
(b) in any public place persistently solicits or importunes for immoral purposes,

shall be deemed a rogue and a vagabond within the meaning of the Vagrancy Act, 1824, and may be dealt with accordingly.

(2.) If it is made to appear to a court of summary jurisdiction by information on oath that there is reason to suspect that any house or any part of a house is used by a female for purposes of prostitution, and that any male person residing in or frequenting the house is living wholly or in part on the earnings of the prostitute, the court may issue a warrant authorising any constable to enter and search the house and to arrest that male person.

(3.) Where a male person is proved to live with or to be habitually in the company of a prostitute and has no visible means of subsistence, he shall, unless he can satisfy the court to the contrary, be deemed to be knowingly living on the earnings of prostitution.

Extent, short title, and commencement.

2.—(1.) This Act shall not extend to Scotland or Ireland.

(2.) This Act may be cited as “The Vagrancy Act, 1898,” and shall come into operation on the expiration of two months from the passing thereof.

## PRISON ACT, 1898.

61 & 62 VICT. CAP. 41.

*An Act to amend the Prisons Acts.*—[12th August, 1898.]

Be it enacted by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled and by the authority of the same, as follows :

Amalgamation of directors of convict prisons with Prison Commissioners—40 & 41 Vict. c. 21.  
Prison rules—28 & 29 Vict. c. 126.

1. The Prison Commissioners shall be by virtue of their office directors of convict prisons, and they shall be assisted in the performance of their duties as such by the inspectors and other officers appointed under section seven of the Prison Act, 1877.

2.—(1) The Secretary of State may make rules (in this Act called prison rules) for the government of local prisons and convict prisons, and may thereby regulate, among other things,—

(a) any matter dealt with by the regulations in Schedule I. to the Prison Act, 1865 ; and

(b) any matter which under this Act may be regulated by prison rules.

(2.) Rules under this Act and the Prison Acts, 1865 to 1893, shall not be made until a draft thereof has lain before each House of Parliament for not less than thirty days during which that House is sitting, and if either House, before the expiration of that period, presents an address to Her Majesty against the draft or any part thereof, no further proceedings shall be taken thereon, but without prejudice to the making of any new draft rules.

(3.) The dates at which any rules made under this Act and the Prison

Acts, 1865 to 1893, come into force shall be notified in the *London Gazette*. 61 & 62 Vict.  
c. 41.

3. The Secretary of State shall appoint for every convict prison a board of visitors of whom not less than two shall be justices of the peace, with such powers and duties as may be prescribed by prison rules. Prison Act,  
1898.

4.—(1.) The mode in which sentences of penal servitude or imprisonment with or without hard labour are to be carried out in prisons may be regulated by prison rules. Boards of  
visitors for  
convict  
prisons.  
Hard labour.

(2.) In making such rules, regard shall be had to the sex, age, health, industry, and conduct of the prisoners.

5.—(1.) Prison rules shall not authorise the infliction of corporal punishment— Restrictions  
on corporal  
punishment  
for prison  
offences.

(a) except in the case of a prisoner under sentence of penal servitude, or convicted of felony or sentenced to hard labour; nor

(b) except for mutiny or incitement to mutiny, or gross personal violence to an officer or servant of the prison; nor

(c) except by order of the board of visitors or visiting committee of the prison, after inquiry on oath held by them at a meeting specially summoned for the purpose, and consisting of not less than three persons, two of them being justices of the peace: Provided that the Secretary of State may, if he thinks fit, appoint a metropolitan police magistrate or stipendiary magistrate to take the place of the board or committee and the magistrate shall in any such case have the same powers as the board or committee.

(2.) An order under this section shall not be carried into effect until it has been confirmed by the Secretary of State, to whom a copy of the notes of evidence and a report of the sentence and of the grounds on which it was passed shall forthwith be furnished.

Such report shall be embodied in the annual report of the Prisons Commissioners.

6.—(1.) Prisoners convicted of offences, either on indictment or otherwise, and not sentenced to penal servitude or hard labour, shall be divided into three divisions. Divisions of  
prisoners—  
40 & 41 Vict.  
c. 21.

(2.) Where a person is convicted by any court of an offence, and is sentenced to imprisonment without hard labour, the court may, if it thinks fit, having regard to the nature of the offence and the antecedents of the offender, direct that he be treated as an offender of the first division or as an offender of the second division. If no direction is given by the court, the offender shall, subject to the provisions of this section, be treated as an offender of the third division.

(3.) Any person imprisoned for default in payment of a debt, including a civil debt recoverable summarily, or in default or in lieu of distress to satisfy a sum of money adjudged to be paid by order of a court of summary jurisdiction, when the imprisonment is to be without hard labour, shall be placed in a separate division and treated under special prison rules, and shall not be placed in association with criminal prisoners, nor be compelled to wear prison dress unless his own clothing is unfit for use.

(4.) Any person imprisoned for default of entering into a recognizance of finding sureties for keeping the peace, or for being of good behaviour, shall be treated under the same rules as an offender of the second division, unless he is a convicted prisoner, or unless the court direct that he be treated under the same rules as an offender of the first division.

61 & 62 Vict. c. 41. (5.) References in sections forty and forty-one of the Prison Act, 1877, to a misdemeanant of the first division within the meaning of section sixty-seven of the Prison Act, 1865, shall be construed as references to an offender of the first division within the meaning of this section.

Prison Act,  
1898.

Prison cells.

7.—(1.) It shall not be necessary to provide or appropriate punishment cells in any prison for the confinement of prisoners for prison offences, but in every prison special cells shall be provided for the temporary confinement of refractory or violent prisoners.

(2.) The Secretary of State shall satisfy himself from time to time that in every local and convict prison separate cell accommodation is provided for all prisoners, and a yearly return showing the accommodation of each prison and the daily average and highest number of prisoners confined therein during the year shall be given in the annual report of the Prison Commissioners.

Remissions  
for industry  
and good con-  
duct.

8. Provision may be made by prison rules for enabling a prisoner sentenced to imprisonment, whether by one sentence or cumulative sentences for a period prescribed by the rules, to earn by special industry and good conduct a remission of a portion of his imprisonment, and on his discharge his sentence shall be deemed to have expired.

Release of  
prisoner on  
payment of  
portion of fine  
—42 & 43  
Vict. c. 49.

9. Where a person is committed to prison for nonpayment of a sum adjudged to be paid by the conviction of any court of summary jurisdiction, then, on payment to the governor of the prison, under conditions prescribed by prison rules, of any sum in part satisfaction of the sum so adjudged to be paid, and of any charges for which the prisoner is liable, the term of imprisonment shall be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days for which the prisoner is sentenced as the sum so paid bears to the sum for which he is so liable.

Provision may be made by rules under section twenty-nine of the Summary Jurisdiction Act, 1879, for the application of sums paid under this section, and for any matter incidental thereto.

Powers of  
prison officers,

10. Every prison officer while acting as such shall, by virtue of his appointment, have all the powers, authorities, protection, and privileges of a constable.

Order for pro-  
duction of  
prisoner—  
16 & 17 Vict.  
c. 30.

11.—(1) A Secretary of State, on proof to his satisfaction that the presence of any prisoner at any place is required in the interest of justice, or for the purpose of any public inquiry, may by writing under his hand order that the prisoner be taken to that place.

(2.) A prisoner taken from a prison in pursuance of an order made under this section, or of a warrant issued under section nine of the Criminal Procedure Act, 1853, shall, whilst outside that prison, be kept in such custody as the Secretary of State may by general rules prescribe, and whilst in that custody shall be deemed to be in legal custody.

(3.) For the purposes of this section, the expression “prisoner” shall include any person lawfully confined under any sentence or under commitment for trial or otherwise, and the expression “prison” shall include any place in which any such person is lawfully confined.

Calculation of  
term of sen-  
tence.

12.—(1.) In any sentence of imprisonment passed after the commence-  
ment of this Act the word “month” shall, unless the contrary is expressed, be construed as meaning “calendar month.”

(2.) A prisoner whose term of imprisonment or penal servitude expires on any Sunday, Christmas Day, or Good Friday, shall be discharged on the day next preceding.

Prison chap-

13. So much of section eleven of the Prison Act, 1865, as prevents a

prison chaplain from holding any benefice with cure of souls or any curacy 61 & 62 Vict. is hereby repealed. o. 41.

14.—(1.) In this Act the expression “local prison” means any prison to which the Prison Acts, 1865 to 1893, apply. Prison Act, 1898.

(2.) For the purposes of the Prison Acts, 1865 to 1893, all officers of a prison shall be deemed to be subordinate officers, except the governor, the chaplain, the medical officer, the matron, and any minister appointed under the Prison Ministers Act, 1863. lains—28 & 29 Vict. c. 126. Definitions—26 & 27 Vict. c. 79.

15.—(1.) The enactments mentioned in the schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule as from the commencement of this Act. Repeal.

(2.) Section sixty-seven and the requisition numbered five in section seventeen of the Prison Act 1865, and Schedule 1 to that Act shall be repealed as from the date at which the first rules made under this Act come into force.

16.—(1.) This Act shall not extend to Scotland or Ireland. Extent. com-

(2.) This Act shall come into operation on the first day of January one thousand eight hundred and ninety-nine, provided that sections six and nine of this Act shall come into operation on the date at which the first rules made under this Act came into force. mendment, and short title.

(3.) This Act may be cited as “The Prison Act, 1898,” and may be cited with the Prison Acts, 1865 to 1893.”

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
16 & 17 Vict. c. 30.	The Criminal Procedure Act, 1853.	In section nine the words “one of Her Majesty’s Principal Secretaries of State or.”
28 & 29 Vict. c. 126.	The Prison Act, 1865.	Section eleven, from “but the chaplain” to the end of the section. In section seventeen the requisitions numbered (1), (2), and (4).
40 & 41 Vict. c. 21.	The Prison Act, 1877.	Sections nineteen and forty-one. Sections thirty-seven and thirty-eight. Section fifty-one from “provided always” to the end of the section.

REVENUE ACT, 1898.

61 & 62 VICT. CAP. 46.

*An Act for amending the Law relating to Customs and Inland Revenue and for other purposes connected with Finance.*—[12th August, 1898.]

PART III.—EXCISE.

14.—(1.) Where a person carries on upon one set of premises the business of a rectifier of spirits, and also the business of a dealer in spirits, all of Amendment of 43 & 44



61 & 62 Vict. spirits in his possession shall for the purpose of the account thereof  
c. 46. and the penalties consequent on any excess or deficiency found in the  
— account under the Spirits Act, 1880, be deemed to be spirits in his stock  
*Revenue Act,* as a rectifier.  
1898.

(2.) Subsection four of section one hundred and twenty-four of the  
Spirits Act, 1880 (which relates to the supply of spirits by an authorised  
methyator). shall apply in the case of a person licensed as a retailer of  
methyated spirits in the same manner as it applies in the case of a person  
authorised to receive methyated spirits.  
Vict. c. 24—  
52 & 53 Vict.  
c. 42.

(3.) Section one hundred and thirty of the Spirits Act, 1880 (which  
relates to the use of methyated spirits for beverages and certain medicines).  
shall apply as if the words “or methylic alcohol” were inserted after the  
words “methyated spirits” wherever the latter words occur.

(4.) In section one hundred and forty of the Spirits Act, 1880 (which  
relates to the search for illicit manufacture of spirits), the expression  
“officer” shall include any officer of the peace.

(5.) The following provision shall be substituted for subsection two of  
section thirty-two of the Spirits Act, 1880, as amended by section twenty-  
five of the Revenue Act, 1889:—

The quantity of yeast removed from, or the quantity of yeast and  
sediment left in, the fermenting backs, whether computed separately or  
together, must not exceed fifteen per cent. of the wort brewed in the  
brewing period, and must not exceed in any one back twenty per cent. of  
the wort or wash in the back.

Subsection two of section thirty-two of the Spirits Act, 1880, and the  
paragraph marked (a) of section twenty-five of the Revenue Act, 1889, are  
hereby repealed.

(6.) This section shall be construed together with the Spirits Act,  
1880.

Amendment  
of law as to  
excise entries  
and traders—  
4 & 5 Vict.  
c. 20.

15.—(1.) If the Commissioners of Inland Revenue at any time require  
a new entry to be made in any case, they shall cause a written notice,  
addressed to the person who signed the existing entry, to be delivered at  
the entered premises, and at the expiration of fourteen days from the  
delivery of the notice the existing entry shall, without prejudice to any  
liability incurred, be void.

(2.) Where any trade or business in respect of which entry is required  
to be made by any Act relating to excise is carried on by a corporation,  
the entry shall be under the seal of the corporation, and signed by the  
chairman or by some director of the corporation, or by its secretary or  
other principal officer.

(3.) Any person signing such an entry, and also the corporation under  
whose seal the entry is made, shall be liable to all duties of excise charged,  
and to all fines, penalties, and forfeitures incurred, in respect of the trade  
or business to which the entry relates.

(4.) Where a trade or business, for the carrying on of which an excise  
licence or entry is required, is carried on without licence or entry by a  
corporation, the corporation, and also the directors or members of the  
governing body of the corporation, by whatever name called, or any of  
them, shall be liable to all fines and penalties imposed in relation to the  
trade or business so carried on by any enactment relating to excise.

(5.) Section six of the Excise Management Act, 1841, is hereby  
repealed.

Repeal of  
certain excise  
enactments as

17. The Acts mentioned in the Schedule to this Act are hereby  
repealed as regards England to the extent specified in the third column

of that Schedule, the parts repealed having relation to certain proceedings for recovery of excise penalties before justices and on appeals to quarter sessions, and being made unnecessary by the Summary Jurisdiction Acts. 61 & 62 VICT. c. 46. Revenue Act, 1898.

PART IV.—MISCELLANEOUS.

18.—(1.) The certificate required by section twenty-four of the Government Annuities Act, 1829, may be given by any person prescribed in that behalf by a warrant of the Treasury. to summary proceedings. Amendment of 10 Geo. 4, c. 24, s. 24.

(2.) If any such certificate is false, the person giving it shall, if he acted wilfully, be guilty of a misdemeanor, and if he acted negligently, be liable on summary conviction to a fine not exceeding fifty pounds.

20. This Act may be cited as "The Revenue Act, 1898." Short title.

SCHEDULE.

Session and Chapter.	Short Title.	Extent of Repeal.
7 & 8 Geo. 4, c. 53	The Excise Management Act, 1827.	Section sixty-seven from "and that all powers" to the end of the section. In section eighty-two the word "next" before "General Quarter Sessions" from "or if there be not one week", to "of one week", and from "and if upon" to the end of the section. Section eighty-three from the first "no such appeal" to "mitigated; or." In section eighty-four the words "hereinbefore by this Act," in section eighty-five the words "as hereinafter mentioned", and sections eighty-six to ninety-two.
4 & 5 Will. 4, c. 51.	The Excise Management Act, 1834.	Section nineteen to "provided also that" and the words "notice and" wherever they occur, and section twenty-three to "such judgment; and" and from "and it shall" to the end of the section.
4 & 5 Vict. c. 20.	The Excise Management Act, 1841.	Section thirty.
32 & 33 Vict. c. 14.	The Revenue Act, 1869.	Section thirty-two from "and every" to "by this Act."

VACCINATION ACT, 1898.

61 & 62 VICT. CAP. 49.

An Act to amend the law with respect to Vaccination.—[12th August, 1898.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons,

61 & 62 Vict. c. 49. in this present Parliament assembled, and by the authority of the same, as follows:—

**Vaccination  
Act, 1898.**

Vaccination  
within six  
months after  
birth—30 & 31  
Vict. c. 84.

1.—(1.) The period within which the parent or other person having the custody of a child shall cause the child to be vaccinated shall be six months from the birth of the child, instead of the period of three months mentioned in section sixteen of the Vaccination Act of 1867, and so much of that section as requires the child to be taken to a public vaccinator to be vaccinated shall be repealed.

(2.) The public vaccinator of the district shall, if the parent or other person having the custody of a child so requires, visit the home of the child for the purpose of vaccinating the child.

(3.) If a child is not vaccinated within four months after its birth, the public vaccinator of the district, after at least twenty-four hours notice to the parent, shall visit the home of the child, and shall offer to vaccinate the child with glycerinated calf lymph, or such other lymph as may be issued by the Local Government Board.

(4.) The public vaccinator shall not vaccinate a child if, in his opinion, the condition of the house in which it resides is such, or there is or has been such a recent prevalence of infectious disease in the district, that it cannot be safely vaccinated, and in that case shall give a certificate under section eighteen of the Vaccination Act of 1867 of postponement of vaccination, and shall forthwith give notice of any such certificate to the medical officer of health for the district.

(5.) Notwithstanding any regulation of any lying-in hospital or infirmary, or other similar institution, the parent of any child born in any institution shall not be compelled under such regulation or otherwise to cause or permit the child to be vaccinated at any time earlier than the expiration of six months from its birth.

Exemption  
from penal-  
ties.

2.—(1.) No parent or other person shall be liable to any penalty under section twenty-nine or section thirty-one of the Vaccination Act of 1867 if, within four months from the birth of the child he satisfies two justices, or a stipendiary or metropolitan police magistrate, in petty sessions, that he conscientiously believes that vaccination would be prejudicial to the health of the child, and within seven days thereafter delivers to the vaccination officer for the district a certificate by such justices or magistrate of such conscientious objection.

(2.) This section shall come into operation on the passing of this Act, but in its application to a child born before the passing of this Act there shall be substituted for the period of four months from the birth of the child the period of four months from the passing of this Act.

Provision  
against  
repeated  
penalties.

3. An order under section thirty-one of the Vaccination Act of 1867, directing that a child be vaccinated, shall not be made on any person who has previously been convicted of non-compliance with a similar order relating to the same child.

Proceedings  
under 30 & 31  
Vict. c. 84,  
s. 31.

4. No proceedings under section thirty-one of the Vaccination Act of 1867 shall be taken against any parent or person who has been convicted under section twenty-nine of the said Act on account of the same child, until it has reached the age of four years.

Treatment of  
prisoners.

5. Persons committed to prison on account of non-compliance with any order or non-payment of fines or costs under the Vaccination Acts shall be treated in the same way as first-class misdemeanants.

Repeal.

9. The enactments mentioned in the schedule to this Act are hereby repealed, during the continuance of this Act, to the extent specified in the third column of that schedule.

10.—(1.) This Act shall not extend to Scotland or Ireland,  
(2.) This Act shall, except as by this Act specially provided, come into operation on the first day of January one thousand eight hundred and ninety-nine, and shall remain in force until the first day of January one thousand nine hundred and four.  
(3.) This Act may be cited as the Vaccination Act, 1898," and the Vaccination Act of 1867, the Vaccination Act, 1871, the Vaccination Act, 1874, and this Act shall be construed together as one Act, and may be cited collectively as "The Vaccination Acts 1867 to 1898."

61 & 62 Vict.  
c. 49.  
—  
*Vaccination*  
*Act, 1898.*  
—  
Extent, com-  
mencement,  
duration, and  
short title—  
30 & 31 Vict.  
c. 84—35 & 36  
Vict. c. 98—  
37 & 38 Vict  
c. 75.

SCHEDULE.  
REPEALS.

Session and Chapter.	Short Title.	Extent of Repeal,
30 & 31 Vict. c. 84.	The Vaccination Act, of 1867.	Section six. Section seven from "and shall provide all stations" to the end of the section. So much of section eight as fixes the amount of payment thereunder. Section twelve. In section fifteen, from "according to the provision" to "performing the operation." Section sixteen, the words "within three months after the birth of such child," and from "within three months after receiving" to "period as aforesaid," and from "and the public vaccinator" to the end of the section. Section seventeen to "vaccinations and" and in the same section the words "if the vaccinator so direct," and the words "and inspected as on the previous occasion." Section nineteen. In section twenty the words "brought to him for vaccination." In section twenty-nine, the words "to take such child or", the words "to be taken", and the words "according to the provisions of this Act." In section thirty-seven the word "of."
34 & 35 Vict. c. 98.	The Vaccination Act, 1871.	Section ten. In section eleven the words "take or" and the words "to be taken."

LIBRARIES OFFENCES ACT, 1898.

61 & 62 VICT. CAP. 53.

*An Act to provide for the Punishment of Offences in Libraries.—*  
[12th August, 1898.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as "The Libraries Offences Act, 1898." Short title

- 61 & 62 VICT.  
c. 53.  
*Libraries  
Offences Act,  
1898.*  
Penalty for  
offences.
2. Any person who, in any library or reading-room to which this Act applies, to the annoyance or disturbance of any person using the same,—  
(1) behaves in a disorderly manner ;  
(2) uses violent, abusive, or obscene language ;  
(3) bets or gambles :  
(4) or who, after proper warning, persists in remaining therein beyond the hours fixed for the closing of such library or reading-room,  
shall be liable on summary conviction to a penalty not exceeding forty shillings.
- Application of  
Act—56 & 57  
VICT. c. 39—  
59 & 60 VICT.  
c. 25.
3. This Act shall apply—  
(a) to any library under the Public Libraries Act, 1892 ; and  
(b) to any library or reading-room maintained by a society registered under the Industrial and Provident Societies Act, 1893, or under the Friendly Societies Act, 1896, or by any registered Trade Union.
- Extent of Act.
4. This Act shall not apply to Scotland or Ireland.

### ELEMENTARY SCHOOL TEACHERS (SUPERANNUATION) ACT, 1898.

61 & 62 VICT. CAP. 57.

*An Act to provide for Superannuation and other annuities and Allowances to Elementary School Teachers certificated by the Education Department.—[12th August, 1898.]*

Punishment  
for fraud and  
personation.

10. If any person—

(a) for the purpose of obtaining for himself or any other person any annuity or allowance under this Act, personates any person, or makes any false certificate, false representation, or false statement, or makes use of any false certificate or document, false representation, or false statement, knowing the same to be false ; or

(b) by means of any such false certificate, document, representation, or statement, or by other fraudulent means, or by any personation, obtains or attempts to obtain for himself or any other person any annuity or allowance under this Act,

he shall on conviction on indictment be liable to imprisonment, with or without hard labour, for a term not exceeding two years, and on summary conviction be liable to imprisonment with or without hard labour, for a term not exceeding three months, or to a fine not exceeding twenty-five pounds, and any penalty under this section may be in addition to any suspension or determination of his allowance under this Act.

For the purposes of this section the obtaining of an annuity or allowance includes the increase of an annuity or allowance, and the prevention or rescission of any cessation or suspension of an annuity or allowance, and the obtaining of any sum in respect of any annuity or allowance.

Definitions—  
33 & 34 VICT.  
c. 75.

11. In this Act, unless the context otherwise requires—

The expression “certificated teacher” means a teacher who is recognised under the Education Code as a certificated teacher for public elementary schools :

The expression “certificate” includes any document issued by the

Education Department, which recognises a teacher as a certificated teacher: 61 & 62 VICT. c. 57.

13. This Act shall not extend to Ireland.

14. This Act shall come into operation on the first day of April next after the passing thereof, or on such day, not more than three months later, as may be fixed by Her Majesty in Council.

*Elementary  
School  
Teachers  
(Superannua-  
tion) Act,  
1828.*

15. This Act may be cited as "The Elementary School Teachers (Superannuation) Act, 1898."

*Extent of Act.  
Commence-  
ment of Act.  
Short title.*

## MARRIAGE ACT, 1898.

61 & 62 VICT. CAP. 58.

*An Act to amend the Law relating to the Attendance of Registrars at Marriages in Nonconformist Places of Worship.*—[12th August, 1898.]

12. If any authorised person refuses or fails to comply with this Act, or the enactments or regulations for the time being in force with respect to the solemnisation and registration of marriages, he shall be guilty of an offence under this Act, and shall be liable, on summary conviction, to a penalty not exceeding ten pounds, or on conviction on indictment to imprisonment with or without hard labour for a term not exceeding two years or to a fine not exceeding fifty pounds, and shall, upon conviction, cease to be an authorised person. Offences

## INEBRIATES ACT, 1898.

61 & 62 VICT. CAP. 60.

*An Act to provide for the treatment of Habitual Drunkards.*—  
[12th August, 1898.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same as follows:

### *Criminal Habitual Drunkards.*

1.—(1.) Where a person is convicted on indictment of an offence punishable with imprisonment or penal servitude, if the court is satisfied from the evidence that the offence was committed under the influence of drink or that drunkenness was a contributing cause of the offence, and the offender admits that he is or is found by the jury to be a habitual drunkard, the court may, in addition to or in substitution for any other sentence, order that he be detained for a term not exceeding three years in any State inebriate reformatory or in any certified inebriate reformatory the managers of which are willing to receive him. Detention of  
habitual  
drunkard  
guilty of  
crime.

(2.) In any indictment under this section it shall be sufficient, after charging the offence, to state that the defendant is a habitual drunkard. In the proceedings on the indictment the offender shall, in the first instance, be arraigned on so much only of the indictment as charges the said offence, and, if on arraignment he pleads guilty or is found guilty by the jury, the jury shall, unless the offender admits that he is a habitual



61 & 62 Vict. drunkard, be charged to inquire whether he is a habitual drunkard, and  
c. 60. in that case it shall not be necessary to swear the jury again.

*Inebriates  
Act, 1898.*

Provided that, unless evidence that the offender is a habitual drunkard has been given before he is committed for trial, not less than seven days' notice shall be given to the proper officer of the court by which the offender is to be tried and to the offender that it is intended to charge habitual drunkenness in the indictment.

Detention of  
habitual  
drunkard four  
times con-  
victed of  
drunkenness  
—42 & 43  
Vict. c. 49.

2.—(1.) Any person who commits any of the offences mentioned in the First Schedule to this Act, and who within the twelve months preceding the date of the commission of the offence has been convicted summarily at least three times of any of the offences so mentioned, and who is a habitual drunkard, shall be liable upon conviction on indictment, or if he consents to be dealt with summarily on summary conviction, to be detained for a term not exceeding three years in any certified inebriate reformatory the managers of which are willing to receive him.

(2.) The Summary Jurisdiction Act, 1879, shall apply to proceedings under this section as if the offence charged were specified in the second column of the First Schedule to the said Act.

#### *Inebriate Reformatories.*

Power of  
Secretary of  
State to  
establish  
inebriate  
reformatories.

3. The Secretary of State may establish inebriate reformatories (in this Act called State inebriate reformatories), and for that purpose may, with the approval of the Treasury, acquire any land, or erect or acquire any building, or appropriate the whole or any part of any building vested in him or under his control, any expenses incurred under this section shall be paid out of moneys provided by Parliament.

Regulations  
for State  
inebriate  
reformatories.

4. The Secretary of State may make regulations for the rule and management of any State inebriate reformatory, and for the classification, treatment, employment, and control of persons sent to it in pursuance of this Act, and for their absence under licence; and, subject to any adaptations, alterations, and exceptions made by such regulations, the Prison Acts, 1865 to 1898 (including the penal provisions thereof), shall apply in the case of every such reformatory as if it were a prison. Provided that no regulation shall authorise the infliction of corporal punishment in any State inebriate reformatory.

Establishment  
of certified  
inebriate  
reformatories.

5.—(1.) The Secretary of State, on the application of the council of any borough or of any persons desirous of establishing an inebriate reformatory, may, if satisfied as to the fitness of the reformatory and of the persons proposing to maintain it, certify it as an inebriate reformatory, and thereupon, while the certificate is in force, the reformatory shall be a certified inebriate reformatory within the meaning of this Act.

(2.) The Secretary of State may make regulations prescribing the conditions on which certificates under this section are to be granted and held, and the circumstances under which they may be withdrawn or resigned.

Regulations  
as to certified  
inebriate  
reformatories

6. The Secretary of State may make regulations as to—

- (a) the establishment, management, maintenance, and inspection of certified inebriate reformatories;
- (b) the classification, treatment, employment, and control of the inmates of certified inebriate reformatories, and the application of their earnings;
- (c) the transfer of such inmates from one certified inebriate reformatory to another, their absence under licence, and their discharge; and

(d) the transfer of inmates from a State inebriate reformatory, to a certified inebriate reformatory, or in special cases from a certified inebriate reformatory to a State inebriate reformatory, and may thereby impose a fine not exceeding twenty pounds or imprisonment for a term not exceeding three months, with or without hard labour, for the breach of any such regulations.

61 & 62 Vict.  
c. 60  
*Inebriates  
Act, 1898.*

In reckoning the period of detention of any person detained in a certified inebriate reformatory the time during which he is imprisoned under this section shall not be computed.

7. The Secretary of State may, with the consent of the Treasury as to number, appoint inspectors of certified inebriate reformatories and assign them such remuneration out of money provided by Parliament as the Treasury may determine.

Inspectors.

8. The Treasury may contribute out of money provided by Parliament such sums and on such conditions as the Secretary of State recommends towards the expenses of the detention of persons in certified inebriate reformatories.

Contribution  
by Treasury.

9.—(1.) The council of any county or borough may contribute such sums, and on such conditions, as they think fit, towards, or may themselves undertake, the establishment or maintenance of a reformatory certified or intended to be certified under this Act, and may defray the whole or any part of the expenses of detention of any person in any certified inebriate reformatory, and two or more councils may combine for any such purpose.

Contributions  
by councils of  
counties and  
boroughs—  
45 & 46 Vict.  
c. 50.

(2.) The council of a borough may borrow for any such purpose in like manner as if it were a purpose for which they are authorised by section one hundred and six of the Municipal Corporations Act, 1882, to borrow.

10. The expense of conveying a person to a certified inebriate reformatory shall be defrayed by the police authority by whom or at whose instance he is conveyed, and shall be deemed part of the current expenses of that police authority.

Expenses of  
conveyance

11.—(1.) Every officer of a certified inebriate reformatory authorised in writing by the managers of the reformatory to take charge of any person ordered to be detained under this Act for the purpose of conveying him to or from the reformatory, or of apprehending and bringing him back to the reformatory in case of his escape or refusal to return, shall, for that purpose and while engaged in that duty, have all the powers, protections and privileges of a constable.

Powers of  
officers and  
arrest.

(2.) If any person ordered to be detained in a certified inebriate reformatory escapes therefrom or from the charge of any person in whose charge he is placed under licence, before the expiration of his period of detention he may be apprehended without warrant and brought back to the reformatory.

12.—(1.) If it is made to appear to a judge of county courts that any person detained in a State or certified inebriate reformatory has any real or personal property more than sufficient to maintain his family, if any, the judge may make an order for the payment of the expenses incurred in relation to the detention of that person, and the order may be enforced against any property of that person in the same way as a judgment of the county court.

Power to  
recover  
expenses  
against  
inebriate's  
estate.

(2.) The order may be made on application—

(a) in the case of a person detained in a State inebriate reformatory, of such person as may be authorised by the Secretary of State in that behalf; and

61 & 62 Vict.  
c. 60

*Inebriates  
Act, 1898.*

Transfer of  
licensing  
powers to  
county  
council—

42 & 43 Vict.  
c. 19—51 & 52  
Vict. c. 19.

Power to con-  
tribute to  
retreats.

Period of  
licence of  
retreat.

Amendment  
of 42 & 43  
Vict. c. 19,  
s. 10, as to  
admission to  
retreat.

Extension of  
term of  
detention and  
re-admission.

Escape of  
patient.

Death of  
patient absent  
under licence.

Power to  
make regula-  
tions—42 & 43  
Vict. c. 19.

(b) in the case of a person detained in a certified inebriate reformatory, of the managers of the reformatory, or any two of them, or of any authority contributing to the maintenance of such person.

*Amendment of Habitual Drunkards Act, 1879.*

13. As from the commencement of this Act, the local authority under the Inebriates Acts, 1879 and 1888, as amended by this Act, and the clerk of the local authority, shall be in a borough the borough council and the town clerk, and elsewhere the county council and the clerk of the county council respectively, and a county council may delegate any of their powers as such local authority to a committee.

14. The council of any county or borough may contribute such sums and on such conditions as they may think fit towards the establishment or maintenance of a retreat under the Inebriates Acts, 1879 and 1888, as amended by this Act, and two or more councils may combine for any such purpose.

15. The period for which a licence may be granted under section six of the Habitual Drunkards Act, 1879, shall be a period not exceeding two years instead of a period not exceeding thirteen months.

16. In section ten of the Habitual Drunkards Act, 1879 a term not exceeding two years shall be substituted for a term not exceeding twelve months, and one justice shall be substituted for two justices as the attesting authority to the signature of an applicant.

17. A person who is or has at any time been detained in a retreat may have his term of detention extended, or be re-admitted, in like manner as a habitual drunkard may be admitted under section ten of the Habitual Drunkards Act, 1879, as amended by section four of the Inebriates Act, 1888, and by this Act, except that the statutory declaration therein mentioned shall not be necessary, and that the attesting justice shall not be required to satisfy himself that the applicant is a habitual drunkard.

18.—(1.) If a patient escapes from a retreat, the time between his escape and his return to the retreat shall not be treated as part of his term of detention in the retreat.

(2.) A warrant under section twenty-six of the Habitual Drunkards Act, 1879, for the apprehension of a patient who has escaped from a person in whose charge he has been placed under licence, may be issued by any justice having jurisdiction in the place where that person resides.

19.—(1.) In case of the death of a patient absent from a retreat under licence, a statement of the cause of his death, with the name of any person present at the death, shall be drawn up and signed by a duly qualified medical practitioner, and copies thereof, duly certified in writing by the person in whose charge the patient had been placed, shall be by him transmitted to the coroner and to the registrar of deaths for the district and to the clerk of the local authority, and to the person by whom the last payment was made for the deceased, or to one, at least, of the persons who signed the statutory declaration under section ten of the Habitual Drunkards Act, 1879.

(2.) If the person in charge of the patient fails to comply with the requirements of this section, he shall be guilty of an offence against the Habitual Drunkards Act, 1879.

20.—(1.) The Secretary of State may make regulations with respect to—

(a) the procedure on application for admission or re-admission into a retreat, or for the extension of the term of detention of a patient; and

(b) the medical or other curative treatment of patients in retreats, including the enforcement of such work as may be necessary for their health; and

(c) the inspection of retreats; and

(d) any other matter necessary or proper for carrying into effect the provisions of this or any other Act with respect to retreats.

61 & 62 Vict.  
c. 60.  
*Inebriates*  
*Act, 1898.*

(2) The regulations made under this section may prescribe forms to be used in substitution for any of the forms in the Second Schedule to the Habitual Drunkards Act, 1879.

### *Supplemental.*

21.—(1.) A regulation made under this Act shall not come into effect until it has lain four weeks on the table of each House of Parliament whilst that House is sitting.

Regulations to  
be laid before  
Parliament.

(2.) The making of any such regulations and the date at which they come into effect, shall be notified in the *London Gazette*.

22. Section one of the Poor Removal Act, 1846, shall apply to a person detained in or absent under licence from a State inebriate reformatory, or a certified inebriate reformatory, as if he were a prisoner in a prison within the meaning of that section.

Application to  
inebriate  
reformatories  
of provisions  
of 9 & 10  
Vict. c. 66.  
Provision as  
to criminal  
habitual  
drunkards in  
in Scotland.

23.—(1.) Where in Scotland a person is convicted on indictment of an offence punishable with imprisonment or penal servitude, if the court is satisfied from the evidence that the offence was committed under the influence of drink or that drunkenness was a contributing cause of the offence, and that the offender admits that he is or is found by the jury to be a habitual drunkard, the court may, in addition to or in substitution for any other sentence, order that he be detained for a term not exceeding three years in any State inebriate reformatory or in any certified inebriate reformatory the managers of which are willing to receive him.

(2.) In the proceedings under an indictment in pursuance of this section, where at the first diet the accused has pleaded not guilty, at the second diet the jury shall in the first instance be sworn, and the accused shall then be tried on so much only of the indictment as charges the said offence, and if he is found guilty, the same jury shall, unless the accused admits that he is a habitual drunkard, be re-sworn to inquire whether he is a habitual drunkard. Where at the first diet the accused pleads guilty of the offence but denies that he is a habitual drunkard, the plea shall be recorded, and at the second diet the jury shall be sworn to inquire whether he is a habitual drunkard.

(3.) This section shall be substituted in Scotland for section one of this Act.

24.—(1.) Any person who in Scotland commits any of the offences mentioned in the First Schedule to this Act, and who within the twelve months preceding the date of the commission of the offence has been convicted summarily at least three times of any offences so mentioned, and who is a habitual drunkard, may be tried on indictment before the High Court of Justiciary or the sheriff with a jury, or with his own consent by the sheriff summarily and shall be liable on conviction to be retained for a term not exceeding three years in any certified inebriate reformatory the managers of which are willing to receive him.

Power to  
detain in  
certified  
inebriate  
reformatory  
in Scotland.

(2.) This section shall be substituted in Scotland for section two of this Act.

61 & 62 VICT.  
c. 60.

*Inebriates  
Act, 1898.*

Adaptations  
to Scotland—  
42 & 43 Vict.  
c. 53—29 & 30  
Vict. c. 117—  
40 & 41 Vict.  
c. 53.

25. In the application of this Act to Scotland, the following further modifications shall be made:—

- (a) References to the Secretary of State shall be construed as references to the Secretary for Scotland ;
- (b) The person vested with the title to any available poorhouse may, with the consent of the Secretary for Scotland, and subject to such conditions and for such term as may be approved of by him, give the use of the whole or any part thereof for the purposes of an inebriate reformatory :
- (c) A reference to the Prisons (Scotland) Act, 1877, and the rules thereunder shall be substituted for a reference to the Prisons Acts, 1865 to 1898 ;
- (d) For references to a borough and the borough council shall be substituted reference to a burgh and the town council thereof : “burgh” shall include police burgh, and “town council” shall include burgh commissioners, and “town clerk” shall include clerk of the burgh commissioners :
- (e) For the purpose of raising money by rate or loan in order to defray expenditure under this Act, county councils and town councils shall have the same powers as if a certified inebriate reformatory were a certified reformatory within the meaning of the Reformatory Schools Act, 1866 ;
- (f) The reference to the Poor Removal Act, 1846, shall not apply, but in any computation of time for the purpose of ascertaining the settlement of any pauper the time during which he has been detained in an inebriate reformatory shall be reckoned as time spent by him as a prisoner.
- (g) References to a judge of County Courts shall be construed as references to the sheriff. References to the coroner shall be construed as references to the procurator fiscal ; and references to the London Gazette shall be construed as references to the Edinburgh Gazette.

Adaptation to  
Ireland —  
18 & 19 Vict.  
c. 126.

26. In the application of this Act to Ireland the following modifications shall be made:—

- (a) References to the Summary Jurisdiction Act, 1879, and the offences specified in the second column of the First Schedule to that Act shall be construed as references to the Criminal Justice Act, 1855, and the offences specified in section one of that Act ;
- (b) For section three of this Act shall be substituted the following provision, namely:—  
The Lord Lieutenant of Ireland may establish State inebriate reformatories, and for that purpose may, with the approval of the Treasury, either authorise the Prisons Board to acquire any land, or to erect or acquire any building, or appropriate the whole or any part of any building vested in or under the control of the Prisons Board, and any expenses incurred under this section shall be paid out of moneys provided by Parliament.
- (c) Subject as aforesaid, references to the Secretary of State shall be construed as references to the Lord Lieutenant ;
- (d) A reference to the Prisons (Ireland) Acts, 1826 to 1884, shall be substituted for a reference to the Prisons Acts, 1865 to 1898 ;
- (e) For references to a borough and the council of a borough there

shall be substituted references to a county borough and the council of a county borough ;

- (f) For the purposes of section nine of this Act, the council of a county borough may, with the consent of the Local Government Board for Ireland, borrow at interest on the security of any corporate land or of the borough fund or borough rate, or of all or any of those securities, such sums as the council think requisite ;

- (g) The expenses of conveying persons to and from certified inebriate reformatories shall be defrayed in like manner as the expenses of conveying prisoners to and from prisons ;

- (h) References to the London Gazette shall be construed as references to the Dublin Gazette ;

- (i) The reference to the Poor Removal Act, 1846, shall not apply.

27. In this Act, unless the context otherwise requires,—

Definitions.

The expression “managers,” in relation to a certified inebriate reformatory shall mean any persons having the management or control of the reformatory :

The expression “expenses,” in relation to the detention of a person in a certified inebriate reformatory, shall include the expenses of his custody and maintenance, whether in the reformatory or when absent therefrom under licence, and any other expenses directed by this Act, or by any order made thereunder to be defrayed by the managers, and also any expenses incurred by the managers in assisting him to return to his home or place of settlement on the expiration of his term of detention :

The expression “patient” shall mean a person who has been admitted into a retreat, and whose term of detention has not expired or been concluded by his discharge.

28. The Act mentioned in the Second Schedule to this Act is hereby repealed to the extent appearing in the third column of that schedule.

29. This Act shall come into operation on the first day of January, one thousand eight hundred and ninety-nine.

30. This Act may be cited as “The Inebriates Act, 1898,” and shall be construed as one with the Inebriates Acts, 1879 and 1888, and those Acts and this Act may be cited together as “The Inebriates Acts, 1879 to 1898.”

Commence-  
ment of Act.

Short title—  
42 & 43 Vict.  
c. 19—51 & 52  
Vict. c. 19.

#### FIRST SCHEDULE.

Description of Offence.	Statute enacting Offence.
Being found drunk in a highway or other public place, whether a building or not, or on licensed premises ... ..	Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 12.
Being guilty while drunk of riotous or disorderly behaviour in a highway or other public place, whether a building or not ... ..	
Being drunk while in charge, on any highway or other public place, of any carriage, horse, cattle, or steam engine ... ..	
Being drunk when in possession of any loaded firearms ... ..	
Refusing or failing when drunk to quit licensed premises when requested.	Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 18.
Refusing or failing when drunk to quit any premises or place licensed under the Refreshment Houses Act, 1860, when requested.	Refreshment Houses Act, 1860 23 & 24 Vict. c. 27), s. 41.



61 & 62 Vict.  
c. 60.

FIRST SCHEDULE (continued.)

*Inebriates  
Act, 1898.*

Description of Offence.	Statute enacting Offence.
Being found drunk in any street or public thoroughfare within the Metropolitan Police District, and being guilty while drunk of any riotous or indecent behaviour.	Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), s. 58.
Being drunk in any street, and being guilty of riotous or indecent behaviour therein.	Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89), s. 29.
Being intoxicated while driving a hackney carriage.	Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89), s. 61.
Being drunk during employment as a driver of a hackney carriage, or as a driver or conductor of a stage carriage in the Metropolitan Police District.	London Hackney Carriages Act, 1843 (6 & 7 Vict. c. 87), s. 28.
Being drunk and persisting, after being refused admission on that account, in attempting to enter a passenger steamer	} Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 287.
Being drunk on board a passenger steamer, and refusing to leave such steamer when requested.	
Being found in a state of intoxication and incapable of taking care of himself, and not under the care or protection of some suitable person, in any street, thoroughfare, or public place.	Public Houses Acts Amendment (Scotland) Act, 1862 (25 & 26 Vict. c. 35), s. 23.
Being in any street drunk and incapable, and not under the care and protection of some suitable person.	Burgh Police (Scotland) Act, 1892 (55 & 56 Vict. c. 55), s. 381.
Being drunk while in charge in any street or other place of any carriage, horse, cattle, or steam engine, or when in possession of any loaded firearms.	Burgh Police (Scotland) Act, 1892 (55 & 56 Vict. c. 55), s. 380.
Being found in any shebeen drunk.	Public Houses Acts Amendment (Scotland) Act, 1862 (25 & 26 Vict. c. 35), s. 19.
Refusing or neglecting when drunk to quit any premises or place licensed under the Refreshment Houses (Ireland) Act, 1860, when requested.	Refreshment Houses (Ireland) Act, 1860 (23 & 24 Vict. c. 107), s. 42.
Being drunk in any street or public thoroughfare within the Dublin police district, or being guilty, while drunk, of any riotous or indecent behaviour.	Dublin Police Act, 1842 (5 & 6 Vict. c. 24), s. 13.
Being found drunk in any street, square, lane, road, way, or other public thoroughfare or place.	Licensing (Ireland) Act, 1836 (6 & 7 Will. 4, c. 38), s. 12.
All similar offences in local Acts.	

SECOND SCHEDULE.—ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
42 & 43 Vict. c. 19.	The Habitual Drunkards Act, 1879.	Section twenty-one, from “An unauthorised absence” to the end of the section. The First Schedule. As from that date at which new forms substituted under this Act come into effect, the Second Schedule and the reference thereto in sections six and ten.

# INDEX.

**AMENDMENT.**—*Conviction.* See sub. "Practice."

**APPEAL.**—*Criminal cause or matter.* See sub. "Practice."

**ASSAULT.**—*Arrest—Criminal procedure—Arrest out of British territory—Legality—Jurisdiction along line of railway in independent state.*—The ruler of an independent state in India granted to the British Government civil and criminal jurisdiction along a line of railway running through his territories. Held (reversing the judgment of the Court below) that this jurisdiction only extended to offences committed on the railway and to matters connected with the administration of the railway, and did not amount to a cession of territory, or justify the arrest of a person on the railway for an offence committed in another part of India in no way connected with it. (*Sayad Muhammad Yusuf-ud-Din v. The Queen.* July, 1897. Priv. O.) 620.

— *Arrest—Military law—Volunteer—Action for assault and false imprisonment—Army Act, 1881 (44 & 45 Vict. c. 58), s. 176.*—By sect. 176 of the Army Act, 1881, "the persons in this section mentioned are persons subject to military law as soldiers . . . that is to say, (8) all non-commissioned officers and men belonging to the volunteer forces of the United Kingdom (a) when they are being trained or exercised with any portion of the regular forces or with any portion of the militia when subject to military law. The plaintiff and the defendants were members of a volunteer corps who were in training at Shorncliffe with a portion of the regular forces. As the camp was being broken up the plaintiff was accused of stealing

certain articles. The captain in command at Shorncliffe ordered that the plaintiff should be conducted under escort to Boxmoor, where the volunteers were dismissed, and then that he should be handed over to the civil authorities at Hemel Hempstead. These orders were carried out, and at that place he was handed over to the defendant Frogley who was superintendent of the police. The plaintiff was tried and acquitted, and in an action for assault and false imprisonment, the jury returned a verdict for Frogley. Against the other three defendants, who were the sergeant and two privates, who formed the escort, there was a verdict for 300*l.* Held, that, although up to the departure from Shorncliffe they were under military law, and so would not be responsible for detaining the plaintiff, yet on the departure from the station they became ordinary civilians, and so were liable. And further, that, although the plaintiff might have been arrested and tried by court martial, or handed over to the civil authorities at Shorncliffe, the actual proceedings were unauthorised. (*Marks v. Frogley and others.* Jan. 1898. Q. B. Div.) 711.

— *Arrest by police—Bicycle—Riding bicycle on highway at night without lighted lamp—Power of police officer to arrest offender—Highway Act, 1835 (5 & 6 Will. 4, c. 50), ss. 78, 79—Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 85.*—A police constable has no power to apprehend a person who is riding a bicycle on the highway at night without having a lighted lamp, as required by the regulations contained in sect. 85 of the Local Government Act, 1888. The provision in that section declaring bicycles to be carriages within

the meaning of the Highway Acts does not include or incorporate the power to arrest without a warrant given by sects. 78 and 79 of the Highway Act, 1835; and, consequently, if a constable for the purpose of obtaining the name and address of an offender, who refuses to stop when called upon, seizes the bicycle and thereby throws the rider to the ground, he is guilty of assault. (*Hatton v. Treeby*. July, 1897. Q. B. Div.) 633.

—— *Cost of prosecution*. See sub "Practice."

—— *Indecent — Evidence*. See sub "Practice."

ASSISTANT OVERSEER.—*Servant of Inhabitants—Indictment*. See sub "Embezzlement."

BAIL.—*Powers of withholding*. See sub "Practice."

BANKRUPTCY.—*Examination — Evidence—Admissibility*. See sub "Practice."

—— *Undischarged bankrupt—Obtaining credit without disclosing bankruptcy—Practice—Evidence—Intent to defraud—32 & 33 Vict. c. 62, s. 18; 46 & 47 Vict. c. 52, s. 31*.—An intent to defraud is not an ingredient of the offence created by sect. 31 of the Bankruptcy Act, 1883, which renders it unlawful for an undischarged bankrupt to obtain credit to the extent of twenty pounds or upwards from any person without informing such person of the fact of his being an undischarged bankrupt. (*Reg. v. Dyson*. April, 1894. O. C. R.) 1.

BASTARDY. — *Summons — Service — "Last place of abode"—Respondent out of jurisdiction—Bastardy Act, 1872 (35 & 36 Vict. c. 65), ss. 3, 4*.—A summons against the respondent as the alleged father of a bastard child was served upon him, under sect. 4 of the Bastardy Act, 1872, by being left at his father's house in England, as his last place of abode. At the date of such service the respondent was in America, where he had no fixed place of abode, but wandered about from place to place begging his way. Held, that the house of the respondent's father was the respondent's "last place of abode" within sect. 4. Held, further, that notwithstanding his absence from England, the summons might be served upon the respondent by being left at his last

place of abode. Dictum of Lord Selborne, L.C. in *Berkley v. Thompson* (10 App. Cas. 45) not followed. (*Reg. v. Webb and others, Justices, and Grove*. March, 1896. Q. B. Div.) 312.

BRAWLING.—*Perpetual curate—Violent and indecent conduct in parish churchyard—Liability to Temporal Court—23 & 24 Vict. c. 32, s. 2*.—Sect. 2 of 23 & 24 Vict. c. 32 applies not only to persons not in holy orders, but also to persons in holy orders, and a clergyman whose conduct in his own church or churchyard is riotous, violent, or indecent may be convicted of an offence under it. (*Vallency v. Fletcher*. Jan., 1897. Q. B. Div.) 512.

BYE-LAW. — *Local Government — County council—Use of obscene language in dwelling-house abutting on public street—Validity—Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 16; Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 23*.—A county council, under the powers conferred by sect. 16 of the Local Government Act, 1888, to make bye-laws for "the good rule and government" of the county, made a bye-law prohibiting, under a penalty, any person from using in any house, building, garden, or other place abutting on or near to a street or public place, any violent, profane, or obscene language to the annoyance of any person in such street or public place. Held, that the bye-law was one which could properly be made for "the good rule and government" of the county, and was valid; and that therefore a man who had used obscene language in his dwelling-house, in a room abutting upon, and the door of which opened into the public street, to the annoyance of various persons in such street, ought to have been convicted under the bye-law. (*Mantle v. Jordan*. Dec. 1896. Q. B. Div.) 467.

—— *Reasonableness*. See sub "Tramways."

—— *Reasonableness—"Person appointed for the purpose"—"Any constable"—Weights and Measures Act, 1889 (52 & 53 Vict. c. 21), ss. 27, 28, and 29*.—Under sect. 28 of the Weights and Measures Act, 1889 (52 & 53 Vict. c. 21), powers are given to local authorities to make bye-laws regulating for the purposes of the Act the sale of coal in quantities not exceeding two hundredweight. By sect.

27 any seller or purchaser of coal, person in charge of a vehicle carrying coal, inspector of weights and measures, or other person appointed for the purpose, and by sect. 29 any inspector of weights and measures, or officer appointed for the purpose by the local authority, may under certain circumstances require coal exposed or intended for sale, to be weighed or re-weighed. By a bye-law purporting to be made under sect. 28 any purchaser or anyone on his behalf, or any inspector of weights and measures, or any constable, was empowered to require the re-weighing of coal when offered for sale in quantities not exceeding two hundredweight: Held, that this bye-law was unreasonable and bad. Per Wright, J.: It is doubtful whether local authorities have any power to make bye-laws as to the weighing of coal under sect. 28, since provision for this is made in the Act itself (sects. 27 and 29). (*Alty v. Farrell*. April, 1896. Q. B. Div.) 321.

— *Reasonableness — Validity — Tramway Company—Passenger required to show ticket if any—Tramway Act, 1870, 33 & 34 Vict. c. 78, s. 46.*—A tramway company under the powers of sect. 46 of the Tramways Act, 1870, made the following bye-law: "Each passenger shall show his ticket (if any), when required so to do, to the conductor or any duly authorised servant of the company, and shall also, when required so to do, either deliver up his ticket or pay the fare legally demanded for the distance travelled over by such passenger." A further bye-law imposed a penalty for breach of any of the company's bye-laws. The respondent refused to show his ticket when asked to do so by an inspector of the company, but gave a number which was the number of the ticket which he had received from the conductor of the company. He had duly paid his fare, and had no intention to defraud, and had not in fact defrauded the company. Held, that the bye-law was reasonable and valid, and the respondent ought to be convicted of a breach of it. (*Lowe v. Volp*. Feb. 1896. Q. B. Div.) 253.

— *Regulation of conduct of business.* See sub "Public Health (London) Act, 1891."

— "Using and frequenting the street for the purpose of betting" — New

*criminal offence—Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 28.* A bye-law made by a municipal corporation inflicting a penalty of not more than 5*l.* upon any person using and frequenting the streets of the borough for the purpose of book-making or betting either on behalf of himself or of any other person, is for the good rule and government of the borough, and therefore a valid bye-law within sect. 28 of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50). The fact that it creates a new criminal offence is not sufficient in itself to make it unreasonable or *ultra vires*. (*Strickland v. Hayes*, 74 L. T. Rep. 137; (1896) 1 Q. B. 290, commented upon. (*Burnett v. Berry*. April, 1896. Q. B. Div.) 325.

— *Validity — County council — Using streets for betting—No obstruction.*—The S. County Council, under sect. 16 of the Local Government Act, made a bye-law as follows: "No person shall frequent any street or public place, and use the same for the purpose of betting or wagering, or agreeing to bet or wager, either on behalf of himself or any other person." Held, that the bye-law was one properly made for the good rule and government of the administrative county and was therefore not *ultra vires* or invalid. (*Jones v. Walters*. March, 1898. Q. B. Div.) 720.

— *Validity—Good government of county —Obscene language on land adjacent to public place—Annoyance to public—Reasonableness.*—A county council acting under the powers conferred by sect. 16 of the Local Government Act, 1888, to make bye-laws "for the good rule and government of the county" passed the following bye-law: "No person shall in any street or public place or on land adjacent thereto, sing or recite any profane or obscene song or ballad, or use any profane or obscene language." Held, that the bye-law was unreasonable and invalid, first, for extending the offence to "land adjacent to" a public place; secondly, for containing no words importing that the act done must have caused annoyance. (*Strickland v. Hayes*. Feb. 1896. Q. B. Div.) 244.

CHILDREN.—*Prevention of cruelty to.* See sub "Practice."

CLERK OR SERVANT.—*Assistant overseer.* See sub "Embezzlement."

**COAL MINES REGULATION ACT.** See sub "Mines."

**COINAGE ACT, 1861.**—*Offence against.* See sub "Practice."

**COMMON ASSAULT.**—*Jurisdiction of justices to commit for trial—Proceedings not authorised by party aggrieved—Jurisdiction of grand jury to find true bill—*24 & 25 Vict. c. 100, s. 46.—An indictment for a common assault may be preferred by a person other than the person aggrieved or someone on his behalf. Where proceedings had been instituted before justices in respect of a common assault without the authority of the person assaulted, and the justices committed the defendant in such proceedings for trial under 24 & 25 Vict. c. 100, s. 46, and a true bill was found by the grand jury: Held, that the grand jury had acted within its jurisdiction in finding a true bill, and that the defendant had been rightly put upon his trial pursuant to such finding. (*Reg. v. Gaunt.* Nov. 1895. C. C. R.) 210.

**CONSPIRACY AND PROTECTION OF PROPERTY ACT, 1895.** See sub "Habeas Corpus."

— *Seaman—Intimidation—Seafaring man out of employment—Construction of statute—Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104)—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60).*—Seafaring men are not as a class excepted from the provisions of the Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86). In construing sect. 16 of that Act the word "seaman" therein is to be taken to mean persons employed under and subject to the liabilities imposed by the Merchant Shipping Acts. (*Reg. v. Lynch and Jones.* Nov. 1897. C. C. R.) 678.

**CONTINUING OFFENCE.** See sub "Practice."

**CONVICTION.**—*Amendment.* See sub "Practice."

**CORONER.**—*Inquisition setting out special facts—Sufficiency of.*—A coroner's inquisition stated injuries caused by a fall into a quarry were the cause of death, and that by the neglect of three named persons to cause the quarry to be fenced the deceased fell therein, and, "that therefore the said three persons did

feloniously kill and slay the deceased." Held, that the inquisition was bad on the face of it, and ought to be quashed upon the ground that, as the charge of manslaughter at the end was qualified by an introductory statement, such introductory statement must show a legal duty on the part of the accused sufficient to maintain the charge, which it did not. (*Reg. v. The Clerk of Assize of the Oxford Circuit.* Jan., 1897. Q. B. Div.) 518.

**COSTS.**—*Prosecution for common assault.* See sub "Practice."

**CRIMINAL LAW AMENDMENT ACT, 1885.**—*Act of indecency.* See sub "Practice."

— *Brothel keeping—Meaning of—House occupied by one woman—*48 & 49 Vict. c. 69, s. 13, sub-sect. 1.—A "brothel" is a place of resort for people of opposite sexes for immoral purposes, and is not a place where one woman receives men. (*Singleton v. Ellison.* Feb. 1895. Q. B. Div.) 79.

— *Evidence of prior acts.* See sub "Practice."

— *Indictment—Rape.* See sub "Practice."

**DISEASES OF ANIMALS ACT, 1894.**—*Animals—Holding sale of swine—Taking round swine in cart and offering for sale—Markets and Fairs (Swine Fever) Order, 1896.*—By an order of the Board of Agriculture, dated the 11th day of December, 1896, made in pursuance of sect. 22, sub-sect. xix. of the Diseases of Animals Act, 1894, "no market, fair, sale, or exhibition of swine shall be held in a district to which this order applies except as expressly authorised by this order," and a "sale of swine (not being in a swine fever infected area) may be held with the licence of the local authority." The respondent Monk was in charge of a horse and float passing along a highway containing pigs, two of which had been previously ordered, and, whilst so travelling, asked other people if they wanted to buy pigs, and subsequently sold them all to various people. This was not a swine fever affected area, and there had been no licence obtained from the local authority. The magistrates held that there had been no contravention of the order of 1896, and dismissed the information. Held (dismissing the appeal), that the magistrates were right,



for, although there was a selling, there was no holding a sale. (*McLean v. Monk*. Jan. 1897. Q. B. Div.) 686.

**DISORDERLY HOUSE.**—*Sunday observance.* See sub "Lord's Day Observance Act, 1781."

**Dogs.**—*Injury by, to cattle or sheep—Sheep trespassing—Injury to sheep while trespassing—Liability of owner of dog—Dogs Act, 1865 (28 & 29 Vict. c. 60), s. 1.*—The plaintiff's sheep were trespassing on the defendant's field, which adjoined the plaintiff's land, and, while the sheep were being driven by their owner back to his own field, the defendant's dog, which was in the field where the sheep were so trespassing, worried and killed one of the sheep. The defendant had several times warned the plaintiff to prevent his sheep from trespassing on his land. Held, that under sect. 1 of the Dogs Act, 1865, the owner of the dog was liable for the injury done by his dog to the sheep, although such sheep was trespassing on his land at the time when the injury was inflicted. (*Grange v. Silcock*. 1897. Q. B. Div.) 644.

**EMBEZZLEMENT.**—*Clerk or servant—Assistant overseer—Servant of inhabitants of parish—Local government—Parish council—Money proceeds of poor rate not vested in parish council—43 Eliz. c. 2—59 Geo. 3, c. 12, s. 7—24 & 25 Vict. c. 96, s. 68—51 & 52 Vict. c. 41, s. 75—56 & 57 Vict. c. 73, ss. 5, 6, 81 (4).*—It is provided by the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 5 (1), that the power of appointing and revoking the appointment of an assistant overseer in every rural parish which has a parish council shall be transferred to and vested in the parish council; by sect. 5, sub-sect. 2 (c) that the legal interest in all property vested either in the overseers or in the churchwardens and overseers of a rural parish other than property connected with the affairs of the Church, or held for an ecclesiastical charity, shall be vested in the parish council; and by sect. 81 (3) that any existing assistant overseer in a parish for which a parish council is elected, shall, unless appointed by a board of guardians, become an officer of the parish council. An assistant overseer was indicted, under 24 & 25 Vict. c. 96, s. 68, for embezzling, as the servant of the inhabitants of the parish, moneys which he had in his possession as assistant overseer. It was argued in objection

to the indictment that the effect of the Local Government Act, 1894 is to make the assistant overseer the servant no longer of the inhabitants of the parish but of the parish council, and to vest the property in all public moneys received by the assistant overseer, in the parish council. Held, that an assistant overseer is the servant of the inhabitants of the parish for which he is appointed; that moneys which the assistant overseer has in his possession as the proceeds of rates do not become the property of the parish council; and that consequently the prisoner was properly described in the indictment as in the employment as servant of the inhabitants of the parish; and that the money which he was alleged to have embezzled was properly described as the property of the inhabitants of the parish. (*Reg. v. Smalman*. Nov. 1896. C. C. R.) 451.

**EVIDENCE.** See also sub "Practice."

— *Admissibility of statement by prisoner and of consequential evidence—Prisoner's answers to constable's questions.*—Where a constable has put questions to the prisoner, and after he has answered them has taken him into custody and charged him, and has subsequently investigated the truth of the answers, evidence of the prisoner's answers, and of their untruthfulness, may be admissible. The question of the admissibility of such matters in any case must be determined with reference to the whole of the circumstances in that case. (*Reg. v. Miller*. May, 1805. Hawkins, J.) 54.

— *Corroboration—Accomplice.* See sub "Habeas Corpus."

— *Intent to defraud.* See sub "Bankruptcy."

— *Opinion of witness.* See sub "False Pretences,"

— *Previous conviction.* See sub "Practice."

— *Prisoner—Order on governor of prison.* See sub "Habeas Corpus."

— *Statement made by deceased person in prisoner's presence—When admissible.*—A mere statement, not amounting to a dying declaration, made by a deceased person in the presence of an accused person, ought not to be admitted as evidence against such accused unless



it is accompanied by evidence which would justify the jury in finding that such statement was made upon an occasion when the accused had an opportunity of answering, and might reasonably be expected to answer it, and in drawing an inference from his omitting to deny or question it, or from his language or demeanour that he did not dissent from the truth of it. The question whether there is any such evidence for the consideration of the jury is for the Court to decide. If the Court thinks there is such evidence, the weight of it and the inference to be drawn from it, for the jury to determine. (*Reg. v. Smith*. Jan. 1837. C. C. Ct.) 470.

**EXCISE—Dog licence—Certificate of exemption—Refusal by Commissioners to grant certificate—Jurisdiction of justices to review decision of Commissioners—Offences of trifling nature—Customs and Inland Revenue Act, 1878 (41 & 42 Vict. c. 15), s. 22—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 16.**—The respondent was summoned for keeping a dog without having a licence or a certificate of exemption under sect. 22 of the Customs and Inland Revenue Act, 1878. He had previously made an application under that section for a certificate of exemption, but the Commissioners of Inland Revenue had refused to grant such certificate, on the ground that, in their judgment, he was not entitled to receive it. When the case came before the justices they admitted evidence on behalf of the respondent to show that he was entitled to receive a certificate of exemption under the section, and, although the respondent had neither a licence nor a certificate of exemption, they refused to convict him on the ground that he was a person who was entitled to receive a certificate of exemption, and they were of opinion that under the circumstances the offence was of so trifling a nature that it was inexpedient to inflict any punishment. Held (1) that the justices had no jurisdiction to review the decision of the Commissioners, and had no power, therefore, to consider whether the respondent was or was not entitled to such certificate of exemption; and (2) that, as the respondent had neither a licence nor a certificate of exemption, the justices could not in point of law have found that the refusal to pay the tax was a "trifling offence" within the

meaning of sect. 16 of the Summary Jurisdiction Act, 1879, and that they were therefore bound to convict. (*Phillips v. Evans*. Feb. 1896. Q. B. Div.) 376.

— **Inland Revenue—Licence—Secretary to "watch club"—Soliciting orders for watches—Liability to penalty—"Bonâ fide traveller"—Revenue Act, 1867 (30 & 31 Vict. c. 90), ss. 1, 3, 17.**—The respondents formed and were secretaries of two "watch clubs," the proprietors of which were in one case a watchmaker in London and in the other case a licensed dealer in plate in London. The respondents induced persons to join these clubs, and the members paid a weekly subscription to the respondents, and at certain intervals a ballot was held, and the successful member became entitled to a silver watch. The respondents did not keep watches in stock, but they communicated the order to the principals in London, and the watch was sent to the member entitled to it. The respondents received a commission on each transaction, and all the transactions were carried on in the places where the respondents resided. Held, that the respondents came within the prohibition of sect. 17 of the Revenue Act, 1867, as "persons soliciting, taking, or receiving orders" for excisable articles without having a proper licence, and that they did not come within the exemption in that section as "bonâ fide travellers. (*Killick v. Graham; Lintern v. Burchell*. May, 1896. Q. B. Div.) 376.

**EXTRADITION.** See also sub "Larceny by Bailee."

— **Falsification of accounts by officer of public company—The crime of faux—Power to surrender in respect of falsification—Extradition Treaty with France, 1878, art. 3, clauses 2, 18—Extradition Act, 1870 (33 & 34 Vict. c. 52), First Schedule.**—An order of committal made against a prisoner, who had been a member or director of a public company in France, for his extradition to the French Government, specified as one of the offences "faux (falsification of accounts and using falsified accounts)." The committing magistrate had come to the conclusion that there was no evidence of forgery or such falsification of accounts as would amount to forgery, according to English law, but

that there was sufficient evidence of such falsification by the prisoner in his character of public officer of a company as would constitute a crime according to English law, and also according to French law as *faux*, or forgery within the Code Pénal. Held, that the falsification of accounts charged was a crime within the Extradition Treaty with France, as coming within the 18th clause of art. 3 (English version), and within the 2nd clause of the same article (French version) as *faux*; that such falsification was a crime according to French law, being *faux* or forgery within art. 147 of the Code Pénal; that it was also a crime according to English law, within sect. 83 of the Larceny Act, 1861, and sect. 1 of the Falsification of Accounts Act, 1875, and that it was an extradition crime within the first schedule of the Extradition Act, 1870, and was therefore a crime in respect of which extradition could be granted, but that the order should be amended by adding words to show that the falsification was in the character of director, officer, or member of a public company. (*Re Arton* (No. 2). Feb. 1896. Q. B. Div.) 277.

— *Fugitive criminal—British subject—Jurisdiction of British Government to surrender British subject to Belgium—Treaty between Great Britain and Belgium—Extradition Act, 1870* (33 & 34 Vict. c. 52), s. 6.—By an extradition treaty made between the British and Belgian Governments—to which the Extradition Acts were applied by Order in Council—it was provided that: “In no case, nor on any consideration whatever, shall the High Contracting Parties be bound to surrender their own subjects.” Held, that, under this treaty, while the executive Government of this country are not bound to surrender a fugitive criminal who is a British subject, they have a discretion to surrender and may surrender such person, although a British subject, upon a *prima facie* case being made out and the requirements of the Extradition Acts being duly complied with. (*Re Galwey*. Jan. 1896. Q. B. Div.) 213.

— *Political offence—Anarchism.* See sub “Habeas Corpus.”

FACTORY.—*Bleaching and dyeing works—Hooking, lapping, packing—Factory and Workshop Act, 1878* (41 Vict. c. 16), s. 93,

*Fourth Schedule, Part 1, sect. 2.*—By the Factory and Workshop Act, 1878, in the Fourth Schedule, Part 1, sect. 2, bleaching and dyeing works are defined as “any premises in which bleaching, beetling, dyeing, calendering, finishing, hooking, lapping, and making-up and packing any yarn or cloth of any material, or the dressing or finishing of lace, or any one or more of such processes, or any process incidental thereto, are or is carried on.” By sect. 93, the word “factory” means “textile factory and non-textile factory,” and “non-textile factory” includes any places named in Part 1 of the Fourth Schedule. The respondents were engaged in hooking lapping, making-up, and packing cloth for exportation, which they received in a finished state from the manufacturers. They were summoned by the appellant for employing a young woman contrary to the Factory Acts. It was contended on behalf of the respondents that their premises were not a factory within the meaning of the Act, as the hooking, lapping, making-up, and packing were not carried on incidentally to bleaching and dyeing. The magistrates decided in favour of the respondents. Held, that the decision was wrong, as the premises came within “bleaching and dyeing works” as defined by the Act, though not within the ordinary sense. (*Rogers v. The Manchester Central Packing Company*. Jan. 1898. Q. B. Div.) 698.

— *Dangerous machinery—Fencing—Factory and Workshop Act, 1878* (41 Vict. c. 16), s. 5 (3)—*Factory and Workshop Act, 1891* (54 & 55 Vict. c. 75), s. 6 (2).—Machinery may be dangerous within sect. 5 (3) of the Factory and Workshop Act, 1878 (41 Vict. c. 16), as amended by sect. 6 (2) of the Factory and Workshop Act, 1891 (54 & 55 Vict. c. 75), although it is machinery from the use of which no danger would arise were it worked with absolute care. Whether machinery is or is not dangerous within that enactment depends upon whether or not there is in the ordinary course of things a substantial probability of danger arising from its use; and this is in all cases a question of fact and degree. (*Hindle v. Birtwistle*. Oct. 1896. Q. B. Div.) 508.

— *Machinery—Factory and Workshop Act, 1878* (41 & 42 Vict. c. 16), s. 9.—Sect. 9 of the Factory and Workshop

Act, 1878, provides that, "A child shall not be allowed to clean any part of the machinery in a factory while the same is in motion." Held, that the construction of this section is that "a child shall not be allowed to clean any part of the machinery while the machinery is in motion"; and therefore that a child cannot clean a fixed part of the machine while the machine is in motion. (*Pearson v. The Belgian Mills Company Limited*. Feb. 1896. Q. B. Div.) 241.

**FACTORIES AND WORKSHOPS.—Machinery —Fencing —**"All dangerous parts of machinery"—Power of magistrate to determine what constitutes dangerous machinery — *Factory and Workshop Act, 1878* (41 & 42 Vict. c. 16), s. 5—*Factory and Workshop Act, 1891* (54 & 55 Vict. c. 75), s. 6.—By the *Factory and Workshop Act of 1891* it is provided that "all dangerous parts of machinery" are to be securely fenced. The power of determining what constitutes "dangerous machinery," which formerly might be settled by arbitration, is now transferred to the magistrate. Upon an information, under sect. 6, sub-sect. 2 of the *Factory and Workshop Act, 1891*, laid by a factory inspector, it appeared that a boy employed by a tin manufacturer had suffered bodily injury whilst working a steam power press for shaping tin plates for boxes and cans. The machine, which was worked by steam power, was put in motion by a treadle whereby an upper die descended upon a lower die in order to stamp the tin plates. The boy's fingers were caught between the two dies and injured. The magistrate dismissed the information on the ground that the part of the machine where the accident occurred was not part of dangerous machinery which required to be fenced under the Act. Held, that the effect of sect. 6, sub-sect. 3, of the Act of 1878 as amended by sect. 6, sub-sect. 2, of the Act of 1891, is general and is not confined to the particular class of machinery mentioned in the previous part of the section. (*Redgrave v. Lloyd and Son*. April, 1895. Q. B. Div.) 149.

— *Workshop open on Sunday—Persons of Jewish religion*—"Open for traffic on Sunday"—*Factory and Workshop Act, 1878* (41 & 42 Vict. c. 16), s. 51.—Sect. 51 of the *Factory and Workshop Act, 1878*, enables a person of the Jewish religion to employ, on certain conditions, young

persons or women of the Jewish religion in his workshop or factory on Sunday, provided that the workshop or factory shall not be "open for traffic on Sunday." The appellant, whose business was to make button-holes for tailors, made arrangements with his customers to make button-holes on their garments for certain prices; and the garments were sent to his workshop and fetched away when the work was done. Persons of the Jewish religion were employed in the workshop on Sunday, and the workshop was open on Sunday in order that customers might send or fetch away garments in pursuance of arrangements previously made, but it was not open for the making of arrangements with old or new customers, or for the receipt of work from casual customers, or for the payment or settlement of accounts. Held, that the workshop was not "open for traffic on Sunday" within the meaning of sect. 51. (*Goldstein v. Vaughan*. March, 1897. Q. B. Div.) 523.

**FALSE PRETENCES.—Evidence—Opinion of witness—Permissible question—Larceny and misdemeanour—Practice—Indictment—Multiplying counts in—Effect of new sentence on person released on licence—27 & 28 Vict. c. 47, s. 9.**—On the trial of an indictment for obtaining goods and credit by false pretences, if the alleged false representation is in writing, it is permissible to ask the person who is alleged to have been defrauded, what opinion he formed on seeing the writing. A person convicted of obtaining goods by false pretences cannot subsequently on the same facts be convicted of larceny. The counts in an indictment should be restricted to those only which are necessary to formulate the charge against the defendant; to multiply them is to embarrass the defendant in his defence. Per Hawkins, J.: If the counts in an indictment are numerous, it is reasonable to ask the court to try each count separately. And also per Hawkins, J.: A Court in passing a sentence on a person who has been released on licence has no jurisdiction to order that the new sentence shall be concurrent with the unexpired portion of the old sentence, which the convict becomes liable to complete. (*Reg. v. John King*. Nov. 1896. C. C. R.) 447.

— *Receiving goods obtained by—Practice—Form of indictment.—Two prisoners,*

Farrell and Taylor, were charged in an indictment which contained four counts of which the first and second counts charged Farrell with obtaining goods by false pretences, the alleged false pretences being set out in the usual form. The third and fourth counts charged that Taylor unlawfully received the goods, unlawfully, knowingly, and designedly obtained by false pretences. The false pretences by which it was alleged that Farrell obtained the goods were not set out in the third and fourth counts. Upon a writ of error it was contended on behalf of Taylor that the indictment was insufficient, as it did not state in the third and fourth counts what the false pretences were by means of which it was alleged that the goods had been obtained. Held, that the indictment was good and sufficiently set forth the charge against Taylor. (*Taylor v. The Queen*. Oct. 1894. Q. B. Div.) 45.

FOREIGN ENLISTMENT ACT, 1870 (33 & 34 Vict. c. 90)—*Constitutional law—British subject out of jurisdiction—Application of statute—Construction of statutes—Preparing military expedition against friendly State—Proclamation of Act—Coming into operation of Act—Criminal law—Indictment—Necessary averment—Matter of inducement—Sufficiency of general allegation—Conclusion contra pacem—Allegations of allegiance.*—A British subject is capable of committing a crime within the jurisdiction, while he is himself without Her Majesty's dominions. A British subject who is outside Her Majesty's dominions commits an offence against the Foreign Enlistment Act, 1870, if he assists in the preparation or fitting out of an expedition, unlawful under that Act, which is prepared or fitted out within Her Majesty's dominions. *Semble*, a British subject commits an offence against the Foreign Enlistment Act, 1870, if he is employed in an unlawful expedition against a friendly State, even if he be so employed outside Her Majesty's dominions. A statute is to be construed *prima facie* to apply only to the United Kingdom, but a statute applicable to Her Majesty's dominions is, if the context permits, to be construed as applying to all British subjects wherever they may be. Where it is provided that a statute shall come into operation in a certain area after the

occurrence of a certain event, it is sufficient in an indictment for an offence against the statute to allege generally that the statute was in operation at the time when, and in the place where, the offence is alleged to have been committed. The conclusion of an indictment that the offence is against the peace of the Queen, is an allegation that the person charged therein is a British subject. (*Reg. v. Jameson and others*. July, 1896. Trial at Bar.) 392.

FORGERY.—*Telegram.*—See sub "Practice."

GAMING AND BETTING.—*Betting house—Persons found therein—Jurisdiction of magistrate to require such persons to enter into recognisances*—33 Hen. 8, c. 9, s. 14—*Gaming Act*, 1845 (8 & 9 Vict. c. 109), s. 3—*Betting Act*, 1853 (16 & 17 Vict. c. 119), s. 11.—Persons who are arrested under sect. 11 of the Betting Act, 1853, in a house which is a betting house within the meaning of that Act, may be brought before a magistrate, and the magistrate has jurisdiction, under sect. 14 of 33 Hen. 8, c. 9, to require such persons to enter into recognisances "no more to play, haunt, or exercise from thenceforth" at any gaming house, although the only evidence against such persons is that they were found in such house. (*Murphy v. Arrow*. Nov. 1897. Q. B. Div.) 662.

—*Betting—Lottery—Coupon competition—Prizes for selecting winners in horse races—Issue of coupons attached to newspaper—Lottery Acts* (42 Geo. 3, c. 119, s. 2; 4 Geo. 4, c. 60), s. 41—*Betting Acts*, 1853 and 1874 (16 & 17 Vict. c. 119, ss. 1, 3, 4; 37 Vict. c. 15, s. 3, sub-sect. 3). The appellants, who were respectively the proprietor and publisher of a certain newspaper, and the owner and occupier of the office where it was published, all having the care and management of the business, published in their paper a "coupon competition," which consisted of a prize offered for selecting the winners in a specified horse race. In a certain issue of their paper they offered a prize of 100*l.* for placing 1st, 2nd, 3rd, and 4th in the "Grand National," which was to be run a few days after. In the newspaper and underneath this notice, were the coupons, of which there were twenty-five in number. According to the "coupon conditions," the first coupon could be filled up, cut out, and



sent in for the competition free of charge, and a competitor was not required to use more than the one free coupon if he so desired. There was no limit to the number of coupons that might be sent in, but if any of the other twenty-four blank coupons were sent in, one penny stamp would have to be sent with each, and if the whole twenty-five were sent in, 2s. would have to be sent. Predictions could also be sent on plain paper if accompanied by one free coupon, and if more than one competitor succeeded in getting the prize, the money was to be divided equally. Remittances were received at the office in respect of this competition. Held, that this competition did not constitute a lottery within the meaning of the Lottery Acts, and that the appellants had not committed any offence either under the Lottery Acts or under the Betting Acts 1853 and 1874. (*Stoddart and others v. Sagar; Sagar v. Stoddart and others*. Aug. 1895. Q. B. Div.) 165.

— *Keeping premises for persons resorting thereto to bet—Nature of offence—Bets by letter or telegram—"Resorting"—Penalties—Betting House Act, 1853—Practice—Indictment for offences not charged in summary proceedings—Vexatious Indictments Acts—Points not reserved by case—Practice of Court as to sending back cases for re-statement.*—The offence created by the first portion of sect. 1 of the Betting House Act, 1853, cannot be proved by evidence of directions communicated to the keeper of the premises unaccompanied by evidence tending to show that the purpose for which the premises were kept was for the betting with persons resorting thereto in person. The offence created by the enactment being, however, the keeping open premises for the purpose of betting with persons resorting thereto, if the evidence shows that the premises were kept for such purpose it is unnecessary to prove actual personal resorting thereto on the part of any persons. Per Hawkins, J. (Wright, J. dissentiente): A person convicted of keeping open, &c., a place, contrary to sect. 1 of the Betting House Act, 1853, is not liable to more than one penalty in respect of the keeping open, &c., of such place upon any one occasion. Where, upon the hearing of a summons before a Court of summary jurisdiction, the defendant is entitled under sect. 17

of the Jurisdiction Act, 1879, to claim, and does claim, to be tried by a jury, the position of matters becomes thereafter the same as if the defendant had been charged with an indictable offence and not with an offence punishable on summary conviction. In such case, therefore, if the offence charged in the summons was one of the offences to which the Vexatious Indictments Acts apply, the statute 30 & 31 Vict. c. 35 renders it lawful for the prosecution to present an indictment to the grand jury alleging a different offence to that, or containing counts alleging offences other than that, in respect of which the defendant was committed for trial, provided that such other offences are, in the opinion of the Court in or before which the indictment is preferred, justified by the evidence given before the Court of summary jurisdiction. The Court for Crown Cases Reserved will only send a case reserved for its opinion back to be restated where anything arises which is incident to a point which is raised, and with regard to which the Court is desirous of further information. It will not do so for the purpose of raising a fresh point. (*Reg. v Brown*. Nov. 1894. C. C. R.) 81.

— *Payment of lost bets in public-house—Bets made elsewhere—"Using house for purpose of betting with persons resorting thereto"—Knowingly "permitting" house to be so used—Betting Act, 1853 (16 & 17 Vict. c. 119), ss. 1, 3.*—The mere payment of bets which have already been lost is not "betting" within the meaning of the Betting Act, 1853; and consequently the habitual user by a professional book maker of the bar of a public-house for the purpose of meeting and paying to customers bets which had previously been made elsewhere and lost by him is not a user of the place "for the purpose of betting with persons resorting thereto," within the meaning of sect. 3 of the Act; and neither the bookmaker nor the licensee of premises, who knowingly permits his house to be so used, can be convicted under the section. (*Bradford, Commissioner of Police, v. Dawson and Parker*. Dec. 1896, Q. B. Div.) 473.

— *Ready-money betting—Using place for betting with persons resorting thereto—Betting with customers resorting to public-house—Money passing outside house—Betting House Act, 1853.—A*

person who habitually resorts to the bar of a public-house with a view to meet persons coming there in the character of customers to bet with him upon the contingency of horse racing may be convicted under 16 & 17 Vict. c. 119, s. 1, of using such place for the purpose of betting with persons resorting thereto, whether the money staked upon the results of such races is handed to him inside or outside the house. (*Reg. v. Worton*. Dec. 1894. C. O. R.) 70.

— *Using place for purposes of betting—*

*Inclosure or racecourse—Betting by book-*

*makers—"House, office, room, or other place"—Betting Houses Act 1853 (16 &*

*17 Vict. c. 119), ss. 1 and 3.—In the*

*expressions "house, office, room, or*

*other place" and "house, office, room,*

*or place," used in the Betting Act, 1853,*

*the word "place" is to be limited in*

*meaning to a place of the same nature*

*as a betting house or office. Adjoining*

*a racecourse, and forming part of it,*

*was an open inclosure, surrounded by*

*iron railings, about a quarter of an acre*

*in extent. In this inclosure, on one side*

*of it, stood the grand stand. Any*

*member of the public was admitted by*

*the owners of the racecourse to this*

*inclosure on race days on payment of*

*1l. The number of persons admitted*

*on race days varied from 500 to 2000,*

*and of these a certain number varying*

*from 100 to 200 were professional book-*

*makers. These bookmakers were*

*admitted on exactly the same terms as*

*any member of the general public, and*

*had no special rights in the inclosure.*

*Of the other members of the public in*

*the inclosure the greater number went*

*there for the purpose of backing horses*

*but a certain number did not bet at all.*

*No bookmaker confined himself to any*

*fixed spot in the inclosure, or used any*

*such apparatus as a desk, stool, umbrella,*

*or any tent, though any particular*

*bookmaker was usually to be found in*

*or near the same part of the inclosure.*

*No betting lists were exhibited. With*

*a few exceptions betting in the inclosure*

*was confined to races just about to be*

*run. The practice of calling out*

*the odds was largely adopted by the*

*bookmakers for the purpose of*

*attracting the attention of backers*

*No person in the inclosure had any*

*greater or less right to act as a book-*

*maker than any other person, although*

in practice only a small number acted as such. Some bookmakers betted on credit, but sometimes a backer was required to deposit his stake. The business of the bookmakers was rival and competing, and each one was independent of any other and of the owners of the racecourse. Held, by Lord Esher, M.R., Lindley, Lopes, Smith, and Chitty, L.JJ., Rigby, L.J. dissenting, that this inclosure was not a "place" within the meaning of the Betting Act, 1853. *Hawke v. Dunn* (76 L. T. Rep. 355; (1897) 1 Q. B. 579) disapproved of. (*Powell v. The Kempton Park Racecourse Company Limited*. July, 1897. Ct. of App.) 561.

— *Using place for purpose of betting*

— *"Place"—16 & 17 Vict. c. 119, ss. 1, 3.—*

The respondent on three successive days

stationed himself at the same spot on

an open piece of ground for the purpose

of betting on horse-races with any per-

son who chose to bet. The spot occupied

by the respondent was a bay like the

stall of a stable, formed by a hoarding

at the respondent's back, and on either

side of him by stays supporting the

hoarding. Held, that the respondent

was using a "place" for the purpose of

betting with persons resorting thereto

within the meaning of sect. 3 of the

Betting Houses Act, 1853. (*Liddell v.*

*Lofthouse*. Feb. 1896. Q. B. Div.) 249.

— *Using a place for purposes of betting*

— *"What is a place"—Betting Act, 1853*

*(16 & 17 Vict. c. 19), ss. 1 and 3.—The*

appellant, a professional bookmaker, on

the day of a certain horse race, stationed

himself at a particular spot on a piece

of ground called the Pit Heap, with his

back against the hoarding of a skittle

alley, and there made bets on the race

with all who chose to bet with him. The

Pit Heap was a vacant and uninclosed

space, to which the public were allowed

free and unrestricted access from various

sides, and on the day in question a large

crowd were assembled there. The appel-

lant remained all the time on the same

spot, but it was not in any way circum-

scribed or fenced in or otherwise distin-

guished. Held, that the appellant was

using a place for the purpose of betting

with persons resorting thereto within

the meaning of sect. 3 of the Betting

Act, 1853. (*McInany v. Hildreth*.

March, 1897. Q. B. Div.) 604.

— *Using place for purposes of betting—*



the justices may regard the facts therein stated as proved unless there is other evidence to show that they are erroneous. (*Hewitt v. Taylor*. Feb. 1896. Q. B. Div.) 226.

— *Adulteration of food—Milk—Certificate of analyst—Sufficiency of*—38 & 39 Vict. c. 63, ss. 6, 18, 21, and *Form in Schedule*.—In a prosecution under sect. 6 of the Sale of Food and Drugs Act, 1875, for selling milk which contained 5 per cent. of added water, the certificate of the analyst, which was put in on behalf of the prosecution, stated that "the sample contained the percentages of foreign ingredients as under, 5 per cent. of added water, to the prejudice of the purchaser." Held, that, as water is a constituent of all milk, it is not sufficient for the certificate to state that a certain percentage of water has been added, but that it ought to state the total percentage of water found in the sample and the constituent parts of the sample, and that the certificate therefore was insufficient and bad, and was rightly rejected as evidence in support of the charge. (*Fortune v. Hanson*. Jan. 1896. Q. B. Div.) 258.

— *Adulteration of food—Milk—False warranty—Time of service of summons—Sale of Food and Drugs Act Amendment Act, 1879 (42 & 43 Vict. c. 30), s. 10*.—The provision of sect. 10 of the Sale of Food and Drugs Act Amendment Act (42 & 43 Vict. c. 30) requiring in prosecutions under the Act that the summons should be served on the person charged with violating the provisions of the Act within twenty-eight days of the purchase for test purposes of the food or drug where the food or drug is of a perishable nature, applies only when the person so charged, is the person from whom the purchase was made. As to others, service within a reasonable time is sufficient. (*Cook v. White*. Feb. 1896. Q. B. Div.) 229.

— *Adulteration of food—Knowledge of purchaser—Costs against magistrates*—38 & 39 Vict. c. 63, s. 6.—W. was charged before justices with selling for new milk an article not of the nature, substance, and quality demanded, contrary to sect. 6 of the Food and Drugs Act, 1875. A sergeant of police, acting under H.'s orders, who was an inspector

under the Act, purchased the milk from W., who, when he was asked for new milk, sold skimmed and charged a penny a pint, the usual price for skimmed milk. The justices differed, one being of the opinion that only a penny a pint being asked, the purchaser must have been aware it was skimmed milk he was buying: Held, that the knowledge of the purchaser was immaterial, and case remitted to the bench to convict. The respondent W. did not appear, but the magistrates did: Held, that costs in such a case could be given against them. (*Heywood v. Whitehead*. July, 1896. Q. B. Div.) 615.

— *Adulteration of food—Prosecution—Proper inspector and analyst to take proceedings—Jurisdiction of magistrate*—38 & 39 Vict. c. 63, ss. 20, 27.—In proceedings against offenders under the Sale of Food and Drugs Acts, inspectors and analysts cannot act for the purpose of taking or analysing samples or otherwise putting the Acts into operation for any district other than the district for which they have been appointed. A dairy company were prosecuted in the C. Police-court under sect. 6 of the Sale of Food and Drugs Act, for selling adulterated milk. The charge was dismissed on the ground that they had purchased a written warranty under sect. 25. An information was then preferred in the same court by the same inspector, and upon the same certificate of analysis, against the vendor, under sect. 27, for giving a false warranty in writing to the dairy company. The premises, both of the vendor and the company, were situated outside the district of the C. court, and neither the sale by the vendor to the dairy company nor the warranty, nor the delivery of the milk by the vendor to the company, took place within the district of the C. court, and no sample was taken at the place of delivery to the dairy company or during the course of such delivery, and neither the inspector who preferred the information, nor the analyst who gave the certificate, was appointed to act for the district where the milk was sold or where it was delivered to the purchaser:—Held, that there had been no violation of the acts by the vendor within the district of the C. court, and that that court had therefore no jurisdiction to deal with the informa-

tion. (*Reg. v. Horace Smith, Metropolitan Police Magistrate, and Kerr.* March 1896. Q. B. Div.) 307

— *Article not of quality demanded—Invoice and label on article supplied to seller—Warranty—38 & 39 Vict. c. 63), ss. 6, 25.*—Neither an invoice which contains a description of an article sold, nor a label affixed to such article, even though it contains the words “warranted genuine and pure,” can of itself constitute a written warranty within the meaning of sect. 25 of the Sale of Food and Drugs Act, 1875. (*Irons v. Von Tromp.* March 1895. Q. B. Div.) 132

— *Margarine — Marking cases and wrappers — Substance sold as butter — Purchase for purpose of analysis — Admission by seller that substance was margarine — Analysis condition precedent to prosecution — Margarine Act, 1887 (50 & 51 Vict. c. 29) — Sale of Food and Drugs Act 1875 (38 & 39 Vict. c. 63).* The Margarine Act, 1887, provides by sect. 6 that every person selling margarine by retail, save in a package duly branded or durably marked, shall in every case deliver the same to the purchaser in or with a paper wrapper, on which shall be printed in capital letters “margarine;” and by sect. 12 that all proceedings under the Act shall, save as expressly varied by this Act, be the same as prescribed by the Sale of Food and Drugs Act, 1875. The Sale of Food and Drugs Act, 1875, provides that an inspector may obtain samples of food and drugs, and if he suspect the same to have been sold to him contrary to the provisions of the Act, he shall submit the same to be analysed, and shall notify to the seller his intention to have the same analysed. If it appears from the certificate of the analyst that an offence against some one of the provisions of the Act has been committed, the person causing the analysis to be made may take proceedings for the recovery of the penalty therein imposed: Held, that it was a condition precedent to the right of a purchaser to take proceedings for a penalty under the above Acts that he should obtain a certificate from the analyst, and that this applied even in the case where a person admitted that he sold margarine contrary to the provisions of the Margarine Act, 1887. (*Smart and Son v. Watts.* Dec. 1894. Q. B. Div.) 62

— *Penalties imposed by police magistrate—Appropriation of same by Receiver of Metropolitan Police—Title of local authority—Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76), s. 126—Metropolitan Police Courts Act, 1839 (2 & 3 Vict. c. 71), ss. 7 and 47—Margarine Act, 1887 (50 & 51 Vict. c. 29), ss. 11 and 12.*—A penalty recovered before a metropolitan police magistrate under sect. 6 of the Margarine Act, 1887, in the case of a prosecution by an “officer, inspector, or constable of the authority who shall have appointed an analyst” within the meaning of sect. 26 of the Sale of Food and Drugs Act, 1875, must be paid to such officer, inspector, or constable, and not to the receiver of the metropolitan police district, in accordance with sect. 47 of the Metropolitan Police Courts Act, 1839. The appropriation of penalties effected by sect. 26 of the Sale of Food and Drugs Act, 1877, is a “proceeding” within the meaning of sect. 12 of the Margarine Act 1887. *Wray v. Ellis* (1 E. & E. 276; 28 L. J. M. C.) considered and distinguished. (*Reg. v. Titterton.* May, 1895. Q. B. Div.) 181

SALMON FISHERY ACTS.—*Salmon—Instrument for catching — Net—Gaffs, wires, snares, or “other like instrument”—Whether net is a “like instrument”—Salmon Fishery Act, 1861 (24 & 25 Vict. c. 109), s. 8—Salmon Fishery Act, 1873 (36 & 37 Vict. c. 71), s. 18.*—Sect. 8 of the Salmon Fishery Act 1861—as extended by sect. 18 of the Salmon Fishery Act, 1873—provides that no person shall use any spear, gaff . . . wire, snare, or other “like instrument” for catching salmon, or have in his possession such instruments with the intention of catching salmon: Held, that a net—even though it be by reason of the smallness of its meshes an improper and illegal net—is not a “like instrument” to a wire, snare, or any of the other instruments mentioned in the section, and that a person, therefore, who is found in possession of such a net, with the intention of catching salmon therewith, cannot be convicted under the section. (*Jones and Parry v. Davies.* Jan. 1898. Q. B. Div.) 706

SEA FISHERIES.—“Taking” — “Removing from the fishery”—*Sea Fisheries (Shell Fish) Regulation Act 1894 (57 & 58 Vict. c. 26), s. 1.*—The taking of shell fish

from the bed in which they were found, with the intention of taking them away altogether, amounts to a removal of such shell fish from the fishery within bye-laws made under sect. 1 of the Sea Fisheries (Shell Fish) Regulation Act, 1894 (57 & 58 Vict. c. 26), even though, as a matter of fact, the shell fish were in the result not actually taken away. (*Thomson v. Burns*. Dec., 1896. Q. B. Div.) 491.

SEARCH WARRANT. — *Form*. — See sub "Practice."

—— *Sufficiency of information*. See sub "Justices of the Peace."

SHOP HOURS ACT, 1892.—*Offence created—Penalty omitted*.—55 & 56 Vict. c. 62, ss. 3, 4, 5.—The Shop Hours Act, 1892, enacts by sect. 3, that no young person shall be employed in or about a shop for a longer period than seventy-four hours, including meal times, in any one week; by sect. 4, that in every shop in which a young person is employed a notice shall be kept exhibited by the employer in a conspicuous place referring to the provisions of this Act, and stating the number of hours in the week during which a young person may lawfully be employed in that shop; and by sect. 5, that where any young person is employed in or about a shop contrary to the provisions of this Act, the employer shall be liable to a fine not exceeding 1*l*. for each person so employed. Held, that the respondent was not liable to a fine under sect. 5, for having employed a young person in a shop in which the notice required by sect. 4 was not kept exhibited. (*Hammond v. Pulsford*. Dec., 1894. Q. B. Div.) 58.

—— *Young person—Employment partly indoors and partly outdoors—Employment "in or about" shop for more than seventy-four hours in one week*.—55 & 56 Vict. c. 62, s. 3.—Sect. 3 of the Shop Hours Act, 1892, provides that no young person shall be employed "in or about a shop for a longer period than seventy-four hours in any one week. Held, that the words "in or about a shop" mean "in or about the business of a shop," and accordingly that where the duties of a young person employed in a shop are partly indoor and partly outdoor duties, the time occupied in the outdoor duties must be counted as time occupied "in

or about the shop" within the meaning of the section. (*Collman v. Roberts*. Feb., 1896. Q. B. Div.) 273.

SLAUGHTER-HOUSE. — See sub "Local Government."

SUMMARY JURISDICTION.—See sub "Justice of the Peace."

—— *Claim to be tried by jury*. See sub "Practice."

—— *Service of summons*. See sub "Practice."

—— *Limitation*. See sub "Practice."

SUMMARY PROCEDURE. — *Continuing offence—Limitation*. See sub "Practice."

—— *Service of summons*. See sub "Practice."

THAMES CONSERVANCY.—*Navigation of barge—Apprentice duly bound—Right of apprentice to act as lighterman—Right of apprentice to assist licensed lighterman as second hand—The Watermen and Lightermen Amendment Act, 1859 (22 & 23 Vict. c. cxxxiii.), s. 54—Bye-law 35 made thereunder—Bye-law 16 of the Thames Conservancy*.—An apprentice properly bound for the period and in the manner prescribed by the Watermen Act, 1859, is an apprentice "qualified according to the Act," within the meaning of sect. 54 of the Act, and he cannot be convicted under that section for acting as a lighterman without having a licence. Such apprentice may be a competent person to assist as second hand a duly licensed lighterman when navigating on the river Thames a barge of over fifty tons burden, within the meaning of the 16th bye-law of the Thames Conservancy, as the words in that bye-law, "one man in addition," are satisfied by there being on board to assist an apprentice duly bound within the meaning of the Watermen Act and the bye-laws made thereunder. (*Gosling v. Newton and Eagers*. March, 1895. Q. B. Div.) 135.

TICKET-OF-LEAVE.—*Effect of new sentence*. See sub "False Pretences."

TRAMWAYS.—*Destruction of ticket—Failure to produce to inspector—Refusal to pay fare again—Bye-laws—Reasonableness*

—A bye-law made by a tramway company requiring passengers to deliver up their tickets to an inspector of the company on demand or pay their fare over again is reasonable and good; and the fact that the passenger's failure to deliver up his ticket on demand is not wilful, but due to his having inadvertently lost or destroyed it, does not relieve him from the obligation to pay his fare again. *Heap v. Day* (51 J. P. 213) considered and approved. (*Hanks v. Bridgman*. Feb. 1896. Q. B. Div.) 224.

— *Production of ticket*. See sub "Bye-law."

UN SOUND FOOD.—*Fruit sold wholesale—Sale of bulk under condition that unsound portion be destroyed—Liability to seizure in hands of retail dealer Questions for magistrates and jury—Bona fides of sale—Public Health (London) Act 1891 (54 & 55 Vict. c. 76), s. 47.*—In order to convict a person under sub-sect. 3 of sect. 47 of the Public Health (London) Act, 1891, of having sold for the food of man an article unfit for the food of man, it is necessary to prove that the article at the time it was found in the purchaser's possession was liable to be seized for one or other of the reasons stated in sub-sect. 1 of the section. That is to say, because being diseased, unsound, unwholesome, or unfit for the food of man, it was exposed for sale or deposited in some place over which the purchaser had control for the purpose of sale or preparation for sale. Further, assuming such facts to be proved, it is a question for the magistrates or jury, having regard to all the circumstances of the sale, to say whether or not the article was intended for the food of man by the defendant when sold by him; and whether, if it was represented at the time of sale not to be so intended, such representation was made *bonâ fide*. So held by the majority of the court, Mathew, J. *dissentiente*. (*Reg. v. Dennis*. May 1894. C. C. R.) 21.

VACCINATION.—*Neglect to procure vaccination—Justice signing summons—Necessity of subsequent order being signed by same justice—Vaccination Act 1867 (30 & 31 Vict. c. 84), s. 31.*—It is not necessary that the justice who grants a summons under sect. 31 of the Vaccination Act, 1867 should afterwards hear the case, or

sign the order directing the vaccination to take place. (*Southcombe v. The Guardians of the Yeovil Union*. Jan. 1897. Q. B. Div.) 489.

— *Notice—Service of—Sufficiency of service—Vaccination Act, 1867 (30 & 31 Vict. c. 84), s. 31.*—Personal service of the notice required by sect. 31 of the Vaccination Act, 1867, to be given to a parent to have his child vaccinated is not necessary, nor is it necessary to show affirmatively that such notice reached the person for whom it was intended. The question of the sufficiency of such service is a question of fact to be determined by the justices upon the circumstances of each particular case. (*Holloway v. Coster*. Jan. 1897. Q. B. Div.) 487.

VAGRANT.—*Wife and children—Wilful neglect to maintain—Bona fide belief of adultery—Vagrancy Act, 1824 (5 Geo. 4, c. 83), s. 3.*—The respondent T. E. was charged under sect. 3 of the Vagrancy Act, 1824, for that he, being able to work and maintain himself and his wife and family "wilfully refused or neglected" to do so. The magistrates found that he refused to maintain his wife because of the *bonâ fide* belief that she had committed adultery, and that he had offered under certain conditions to support his children. They dismissed the summons, holding that under these circumstances T. E., the respondent, had not "wilfully refused or neglected": Held, that the magistrates were right. (*Morris v. Edmonds*. Aug. 1897. Q. B. Div.) 627.

VOLUNTEER CORPS.—*Power to make rules—Loss of capitation grant through inefficiency of member of corps—Rule making member liable for loss—Ultra vires—Volunteer Act 1863 (26 & 27 Vict. c. 65), s. 24.*—The power given by sect. 24 of the Volunteer Act, 1863 (26 & 27 Vict. c. 65) to officers and members of a volunteer corps to make rules for the management of the property, finances, and civil affairs of the corps, does not authorise them to make a rule rendering any member of the corps who shall fail to make himself efficient, and to earn the Government capitation grant, liable to pay to the funds of the corps a sum equal to the amount of Government capitation grant which he has in consequence failed to earn. Per Wright, J.:



sion, to be regarded as induced by undue influence. They are, therefore, admissible in evidence against him, unless excluded by the provisions of 53 & 54 Vict. c. 71, s. 27 (2). The provision contained in 46 & 47 Vict. c. 52, s. 17, that the notes of the examination when read over to and signed by the bankrupt may be used in evidence against him, provides merely a convenient method of proof, and does not exclude oral evidence of the statements made by the bankrupt in the course of such examination. *Semble*, "conduct," in the Bankruptcy Act 1883, s. 17 (1) refers to the matters specified in sect. 28 of that Act. (*Reg. v. Erdheim*. June, 1896. Q. B. Div.) 355.

— *Evidence — Admissibility — Confession — Inducement to confess — Duty of prosecuting counsel and solicitor — Bail.*—A confession made in consequence of an inducement held out by a person in authority is not admissible evidence. A statement made by an accused person after he has been told that it will be better for him to speak the truth, cannot be admitted as evidence against him. *Semble*, it is the duty of prosecuting counsel and solicitors having the charge of prosecutions to satisfy themselves before putting in evidence a confession, that it was not made under such circumstances as to be inadmissible. *Semble*, bail is not to be withheld unless it is otherwise impossible to ensure the prisoner's attendance at the trial. (*Reg. v. Rose*. Feb. 1898. C. C. Res.) 717.

— *Evidence — Admissibility of confession — Statement of fellow prisoner read and acknowledged by her in prisoner's presence, and prisoner's statement thereupon.*—Where one of two prisoners in custody on a charge against them jointly has voluntarily made and signed a statement implicating the other, and such statement is read over to the person implicated, and the latter, after being cautioned, makes a confession which is taken down in writing, and signs it when so written, the statement of the one prisoner and the admission of the other may be given in evidence on the trial of the latter. (*Reg. v. Hirst*. July, 1896. Dugdale, Q.C., Spec. Com.) 374.

— *Evidence — Competence of prisoner's*

*husband to give evidence — Prevention of Cruelty to Children Act, 1894*—The offence of feloniously causing grievous bodily harm, where the person alleged to have been injured is a child under sixteen, is not an "offence involving bodily injury to a child under sixteen" within the meaning of the concluding paragraph of the schedule to the Prevention of Cruelty to Children Act, 1894, and in such a case the prisoner and his or her wife or husband are not competent witnesses. (*Reg. v. Elizabeth Roberts*. Aug. 1896. Cave, J.) 530.

— *Evidence — Intent to defraud.* See sub "Bankruptcy."

— *Evidence — Previous conviction — Meaning of "convicted" — Finding of jury — Prisoner released on recognisances — Offences against Coinage Act, 1861 (24 & 25 Vict. c. 99), ss. 9 and 12.*—The prisoner having been found guilty by the verdict of a jury of any of the misdemeanours, crimes, or offences mentioned in sects. 9, 10 and 11 of 24 & 25 Vict. c. 99 (the offences relating to Coinage Act 1861) is sufficient to satisfy the word "convicted" in sect. 12 of that Act, which enables the conviction of a person for felony who has committed any of the misdemeanours, crimes, or offences mentioned in sects. 9, 10, and 11, after having been convicted previously of any of such misdemeanours, crimes, or offences. Evidence therefore of such finding is sufficient to support an indictment under sect. 12, and it is not necessary to prove that final judgment was given upon such finding. (*Reg. v. Blaby*. April, 1894. C. C. R.) 5.

— *Hear and determine — Service of summons — Refusal to proceed — Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43) s. 1 — London Building Act, 1894 (57 & 58 Vict. c. ccxiii.), s. 188 (1).*—The procedure for the service of a summons under sect. 188 (1) of the London Building Act, 1894, is only available where, after ordinary inquiry the person cannot be found or identified. When by such inquiry the person on whom the summons is to be served can be found or identified, then the summons must be served according to sect. 1 of the Summary Jurisdiction Act, 1848. (*Reg. v. Mead; Ex parte The London County Council*. Nov. 1897. Q. B. Div.) 670.

— *Indecent assault—Evidence—Complaint by prosecutrix made in absence of prisoner—Particulars of complaint admissible—Ground on which admissible.*—On the trial of an indictment for an assault on a female, not only the fact that the prosecutrix made a complaint immediately after the occurrence, but the particulars of her statement, even if made in the prisoner's absence, are admissible. The fact that the prosecutrix made a complaint is admissible as evidence negating consent on her part; and therefore the whole statement ought, in the interest of the prisoner, to be given in evidence. (*Reg. v. William Lillyman.* June, 1896 C. C. R.) 341.

— *Indictment—Clerk or servant.* See sub "Embezzlement."

— *Indictment—Commencement of prosecution—Rape—Defilement of girl under sixteen—Greater offence including the lesser—48 & 49 Viet. c. 69, ss. 5, 9.*—A prosecution for rape is in fact a prosecution for any of the offences of which a person tried on an indictment for rape may be found guilty. Although then it is provided by the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 5, that a prosecution for an offence under sect. 5 (1) shall not be commenced more than three months after the commission of the offence, a person originally charged with rape within the period limited may be subsequently convicted of the offence under sect. 5 (1). (*Reg. v. West.* Dec. 1897. C. C. R.) 675.

— *Indictment—Evidence—Certificate of birth—Proof of age—Cruelty to children—Custody or charge of child—57 & 58 Vict. c. 41.*—An indictment on which several defendants are charged may contain counts charging offences against individual prisoners as well as counts charging all the prisoners jointly. If it is likely that injustice may be caused to any prisoner by trying all the prisoners together, the Court may order the prisoners to be tried separately. Whether a person has the custody, charge, or care of a child is a question of fact; the age of a person may be proved by any lawful evidence; the production of a certificate of registration of birth is not, therefore, essential in cases where the age of a person is to be proved. *Semble*, the neglect made penal by the Prevention of

Cruelty to Children Act, 1894 (57 & 58 Vict. c. 41), s. 1 is wilful neglect. (*Reg. v. Cox.* Dec. 1897. C. C. R.) 672.

— *Indictment—Forged instrument—Telegram—Sufficiency of description—Admissions—How far plea of guilty extends—24 & 25 Vict. c. 98, ss. 38, 42.*—A telegram may be a forged instrument within 24 & 25 Vict. c. 98, s. 38, that section not being confined to instruments such as are mentioned in the earlier sections of the Act, but including instruments to forge which is either a felony or a misdemeanour. Where subsequently to a race having been won by a horse named "Lord of Dale," a forged telegram was sent to certain bookmakers containing the words "Three pounds Lord Dale," in consequence of the receipt of which the sum of 9*l.* was credited by the bookmakers in the account of the person by whom the telegram purported to have been sent: Held (*Lord Russell, C.J. and Williams, J. dissentientibus*), that the sender of the telegram had been rightly convicted, under 24 & 25 Vict. c. 98, s. 38, of procuring a forged instrument to be delivered: Per Hawkins, J.: The description in an indictment of a forged instrument as a forged telegram, that is to say, a forged message and communication purporting to have been delivered at a certain post-office, to wit, at Royal Exchange, Manchester, aforesaid, for transmission by telegraph, and to have been transmitted by telegraph to a certain other post-office, to wit, the head post-office at Manchester aforesaid, is a sufficient description of such instrument for the purposes of 24 & 25 Vict. c. 98, s. 38; and would, after verdict, be sufficient for the purposes of an indictment under sect. 42 of that Act. Also per Hawkins, J.: By pleading guilty a prisoner does not admit the truth of the facts stated in the depositions. He merely admits that he is guilty of the offence as charged in the indictment, and nothing more. (*Reg. v. Riley.* Feb. 1896. C. C. R.) 285.

— *Form of indictment.* See sub "False Pretences."

— *Indictment—Multiplicity of counts.* See sub "False Pretences."

— *Indictment—Necessary Averment.* See sub "Libel."



intoxicating liquor by proprietors of theatres in pursuance of the Act in that behalf." By the Licensing Act, 1874, that Act is to be construed as one Act with that of 1872, and by sect. 3, "All premises in which intoxicating liquors are sold by retail shall be closed as follows: (2) If situated . . . in a town . . . as defined by the Act; (a) on Saturday night from eleven o'clock." For the appellant it was contended that the exemption contained in sect. 72 was an absolute exemption, and that a theatre duly licensed under the Acts in that behalf was exempt from this provision as to closing. Held, affirming the decision of the quarter sessions, that, on the true construction of sect. 72, the exemption does not affect the proper closing hour, and that it only applies in that the holders of theatre licences need not go to the justices for a licence for the sale of intoxicating liquors. (*Gallagher v. Rudd*. Nov. 1897. Q. B. Div.) 654.

— *Intoxicating liquor—Sale by barman to drunken person contrary to instructions—Liability of licensee—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 13.*—The licensee of a licensed house gave instructions to his barman not to sell drink to drunken persons. A barman during the absence of his master, sold drink to a drunken person, although his attention was called to the fact that the man was drunk. Held, that as the act of the barman in selling the drink was within the ordinary scope of his employment, the licensee was liable for such act, and was, therefore, guilty of the offence under sect. 13 of the Licensing Act, 1872, of selling intoxicating liquor to a drunken person. (*The Commissioners of Police v. Cartman*. April, 1896. Q. B. Div.) 341.

— *Intoxicating liquor—Sale during prohibited hours to be consumed off premises—Bonâ fide traveller—Licensing Act, 1874 (37 & 38 Vict. c. 49), ss. 9, 10.*—The exemption as to sales of intoxicating liquors to bonâ fide travellers contained in sect. 10 of the Licensing Act, 1874 (37 & 38 Vict. c. 49), extends only to sales to such persons of intoxicating liquors to be consumed on the premises. (*Mountfield v. Ward*. Jan. 1897. Q. B. Div.) 515.

— *Intoxicating liquor—Sale of same to*

*police sergeant—On or off duty—Knowledge of same—Licensing Act, 1872, (35 & 36 Vict. c. 94), s. 16, sub-sect. 2.*—Appellant was convicted under sect. 16, sub-sect. 2, of the Licensing Act, 1872, which prohibits any licensed person from supplying "any liquor or refreshment whether by way of gift or sale to any constable on duty unless by authority of some superior officer of such constable." The police constable was in fact on duty. Held, that, the appellant having bonâ fide believed the police constable to be off duty, the conviction must be quashed. (*Sherras v. De Rutzen*. April, 1895. Q. B. Div.) 157.

— *Intoxicating liquor—Sale of liquor elsewhere than on licensed premises—35 & 36 Vict. c. 94, s. 3.*—The appellant held an off licence for the sale of beer by retail. His practice was to employ a carter, who went round to the customers' houses every week with a cart from which he delivered jars of beer and received orders for the following week. The carter in this way received an order from a customer at the customer's own house for a jar of beer which was the following week delivered from the cart at the house and there paid for. The jar was one of several gallon jars, none of which were distinguished by any label or other mark from other similar jars in the cart. Held, that the sale of beer to the customer took place at the latter's house and not on the licensed premises, and the appellant was therefore properly convicted under sect. 3 of the Licensing Act, 1872, of selling intoxicating liquor at a place where he was not authorised by his licence to sell the same. (*Pletts v. Campbell*. June, 1895. Q. B. Div.) 178.

— *Licensed premises—Closing hours—"Found drunk on licensed premises" during closing hours—Liability to conviction—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 12.*—Licensed premises do not cease to be licensed premises during closing hours, and when they are actually closed to the public. Consequently, a customer, who, being neither a lodger nor inmate of the house, is found drunk on the premises during closing hours, and when the premises are actually closed to the public, may properly be convicted under sect. 12 of the Licensing Act, 1872, of being found drunk on

licensed premises." *Lester v. Torrens*. (2 Q. B. Div. 403) distinguished. (*Reg. v. Pelly and another*, Justices. March, 1896. Q. B. Div.) 556.

—— *Licensed premises—Power of constable to enter—Supposed violation of Act—Reasonable grounds—Sounds of music and singing*—37 & 38 Vict. c. 49, s. 16.—By sect. 16 of the Licensing Act, 1874, a constable is empowered at all times to enter any licensed premises "for the purpose of preventing or detecting the violation" of any of the provisions of the Act, which it is his duty to enforce, and any person who refuses or fails to admit any constable demanding to enter in pursuance of this section is made liable to a penalty. A police constable, hearing the sound of music and singing proceeding from a private room in a licensed house, entered the house and demanded admission to the private room. The appellant failed to admit the constable to the room. Held, that a constable is not empowered under this section to enter on licensed premises unless there is some evidence from which he may reasonably suppose that a breach of the law is being committed, and the mere sound of music coming from a private room is not such evidence. The appellant, therefore, was not obliged to admit the constable. (*Duncan v. Dowding and others*. March 1897. Q. B. Div.) 527.

—— *Off licence—Sale of beer—Order by post-card—Appropriation at brewery—Where sale takes place*—35 & 36 Vict. c. 94, s. 3.—When an order for beer is sent to the holder of a licence to sell beer to be consumed off the premises, by means of a post-card directed to the licensed premises, the contract of sale is made at the licensed premises; and when the order assents to an appropriation at the licensed premises of the beer so ordered, and such appropriation takes place there, the subsequent delivery by the holder of the licence of the beer ordered, and receipt by him of its price at the house of the customer will not be a breach of sect. 3 of the Licensing Act, 1872 (35 & 36 Vict. c. 94). *Pletts v. Campbell* (18 Cox C. C. 178; 73 L. T. Rep. 344; (1895) 2 Q. B. 229) distinguished. (*Pletts v. Beattie*. Feb. 1896. Q. B. Div.) 264.

—— *Peninsular officers and soldiers—Claim by statute to sell liquor without*

*licence*—53 Geo. 3, c. 67, s. 1.—The 53 Geo. 3, c. 67, provided that all such officers, mariners, soldiers, or marines, as had been employed in the service of His Majesty since the year 1802, and also the wives and children of such officers, &c., might set up and exercise such trades as they were apt and able for in any city, town, or place, without any let, suit, or molestation of any person whatsoever, any statute, law, ordinance, custom or provision, to the contrary in anywise notwithstanding: Held, that this Act did not exempt persons coming within the classes described therein from the general provisions of the licensing or other Acts, but had reference merely to various restrictions such as those imposed by charters, or by local privileges or customs, and therefore did not enable a person to sell intoxicating liquor without the proper licence under the Licensing Acts. (*Killin v. Swatton*, Dec. 1896. Q. B. Div.) 477.

LOCAL GOVERNMENT.—"*Slaughter-house*" — "*So continued to be used*" — *Towns Improvement Clauses Act* 1847 (10 & 11 Vict. c. 34), s. 126, and *Local Government Act*. 1858 (21 & 22 Vict. c. 98).—"Slaughter-house" as used in the *Towns Improvement Clauses Act*, 1847, and the *Local Government Act*, 1858, includes not merely the premises where the actual slaughtering of cattle takes place, but also the premises used for processes connected with or incident to the slaughtering; and premises in use for these processes, even though no actual slaughtering of cattle takes place within them, are used as slaughter-houses within sect. 126 of the *Towns Improvement Clauses Act*, 1847. A. was owner of certain premises in Sheffield, which for many years previous to the adoption of the *Local Government Act*, 1858 by the borough, had been used for the slaughter of cattle. In January, 1893 he ceased to slaughter cattle there, but used the premises for "pinning" cattle preparatory to slaughter. In March, 1895 he again began to slaughter cattle there. On summons for using as a slaughter-house an unlicensed place, the magistrate held that, as no cattle had been slaughtered on the premises between January, 1893 and March, 1895, the premises had not been "so used," or "continued to be used as such," within sect. 126 of the *Towns Improvement Clauses Act*, 1847, and convicted A.

On appeal: Held, that the conviction was wrong. (*Hides v. Littleton*. Feb. 1896. Q. B. Div.) 219

LONDON BUILDING ACT, 1894.—*Service of summons under*. See sub "Practice."

LORD'S DAY OBSERVANCE ACT, 1781.—*Entertainment or amusement—Keeper of hall—Persons "managing or conducting" entertainment*—2 Geo. 31, c. 40, ss. 1 and 2.—By sect. 1 of the Lord's Day Observance Act, 1781, the "keeper" of any house, room, or place which is opened or used for public entertainment or amusement on Sunday, to which persons are admitted by payment, is liable to forfeit 200*l.*, and the person "managing or conducting such entertainment or amusement," is liable to forfeit 100*l.*, and, by sect. 2, any person who shall "appear, act, or behave himself as master or as the person having the care, government, or management of any such house, &c., shall be deemed and taken to be the keeper thereof." A hall, which belonged to a company in liquidation, was let to a society for Sunday lectures, which the jury found to be entertainments or amusements in contravention of the Act. Wilson, who had been secretary of the company before the liquidation, and afterwards acted as solicitor to the liquidator, let the hall to the society for these lectures. A licence for music and dancing on week days had been granted to him in respect of the hall, but he had no personal interest in the hall. Ward and King each acted as chairman at one of these lectures; each of them introduced the lecturer, and then left the platform and sat amongst the audience: Held affirming the judgment of Mathew, J.), that Wilson was the "keeper" of the hall, and that Ward and King were not persons "managing or conducting the entertainment or amusement within the meaning of the Act, and that they were not liable to the penalties. (*Reid v. Wilson and Ward*; *Same v. Wilson and King*. Dec. 1894. Ct. of App.) 56.

— Penalties — Sunday observance — Lectures on entertaining subjects on Sundays—Nature of debates prohibited—"House opened or used for public entertainment or amusement"—Disorderly house—Liability of opener of meeting and licensee of house—21 Geo. 3. c. 49, ss. 1, 2.—Sect. 1 of the Lord's Day

Observance Act, 1781, enacted that, "any house, room, or other place which shall be opened or used for public entertainment or amusement on any part of the Lord's Day, and to which persons shall be admitted by the payment of money, shall be deemed a disorderly house or place," and penalties are therein imposed upon (amongst other persons) the "keeper" of the same, and upon the person "managing and conducting such entertainment or amusement," and upon the person acting as "master of the ceremonies," of any such meeting, or as chairman of any meeting for public debate. In an action for penalties under this Act in respect of Sunday-evening lectures on entertaining subjects to which the public was admitted on payment of small sums, but which were not given for the purposes of profit, the jury having found that the hall which was hired for the lectures was on the occasion in question "a place open and used for public entertainment or amusement": Held, that a person who had taken the chair at the lecture, introduced the lecturer, and then had taken his place amongst the audience, was not liable to penalties under the Act, either as "master of the ceremonies," or as "manager or conductor" of the entertainment, or as chairman of a debate within the meaning of the section; also that a person to whom the licence for the use of the hall had been granted by the authorities, and who, on behalf of the owner, had sanctioned the letting of the hall, was not liable as "keeper" of such place. (*Reg. v. Wilson and King*. July, 1894. Q. B. Div.) 11.

"MAINTENANCE."—*Criminal proceedings—Maintenance of criminal suits—Legality of—Indemnity for costs—Right of action on indemnity*.—The doctrine of maintenance is confined to civil actions, and does not apply to criminal proceedings, the "maintaining" of which is therefore not illegal; and accordingly, where a person gives a guarantee whereby he agrees to indemnify a solicitor in respect of the costs of criminal proceedings to be undertaken against another person, and such proceedings are taken and costs incurred, the solicitor can maintain an action on such guarantee, and the person sued thereon cannot set up as a defence that the agreement was void as being

tainted with the illegality of maintenance. (*Grant v. Thompson*. Jan. 1895. Q. B. Div.) 100.

**MALICIOUS DAMAGE ACT, 1861.**—*Wilful or malicious damage to property*—*Person walking across grass field*—*Damage to grass*—*Conviction for wilful damage*—24 & 25 Vict. c. 90), s. 52.—The appellant was summoned under sect. 52 of the Malicious Damage Act, 1861 for wilfully and maliciously damaging certain grass in the respondent's field. It was proved that the appellant, in passing from one footpath to another, walked across the respondent's grass field for a distance of about 130 yards—the grass being thick and deep; that he passed notice boards showing that there was no right of way; that he claimed no right of way; that after the respondent had told him he had no right to be there he persisted in going on, and said he should continue to cross the field when he chose. The justices found as a fact that, as the grass was long and thick, the appellant must have done some damage to the grass, and that he did actual damage to the amount of sixpence and, being of opinion that the trespass was a wilful and malicious act, they convicted the appellant under the section. Held, that, upon the facts proved, the appellant was properly convicted under sect. 52, of having committed wilful or malicious damage to property. (*Gayford v. Chouler*. Jan. 1898. Q. B. Div.) 702.

**MARGARINE.**—*Sale by retail*—*In or with a paper wrapper*—*Margarine Act 1887* (50 & 51 Vict. c. 29), s. 6.—The respondent sold margarine by retail in thin cardboard boxes with a ribbon of paper round each box to keep it closed. Over ribbon and box was stamped "margarine" in letters a quarter of an inch square. When the appellant bought a quantity of margarine the respondent delivered the box containing it to him wrapped up in an unstamped paper covering, but it was not clear whether the outside paper covering was put on at the request or not of the appellant. The magistrate dismissed a summons against the appellant for selling margarine not in or with a paper wrapper with "margarine" stamped on it contrary to sect. 6 of the Margarine Act 1887 (50 & 51 Vict. c. 29). Held, that the dismissal was right. Per Lord Russell, C.J.: The

cardboard box with ribbon constituted a paper wrapper within sect. 6, even though covered with another wrapper. Per Cave, J.: A paper wrapper to satisfy sect. 6 must be an outer wrapper (*Toler v. Bishop*. Oct. 1895. Q. B. Div.) 202.

— *Using in refreshment-house*—*Exposed for sale*—*Margarine Act, 1887* (50 & 51 Vict. c. 29), s. 6.—The sale of margarine in a refreshment-house as a condiment with other food to be consumed on the premises is not a sale by retail within sect. 6 of the Margarine Act, 1887 (50 & 51 Vict. c. 29). Respondents were proprietors of a refreshment-house where bread with margarine spread upon it, and haddock with a piece of margarine as a condiment to it, were sold to be consumed on the premises. No margarine was sold to be taken away. The large piece of margarine from which that used in the shop was taken was exposed to the view of customers, and so were the buttered slices of bread. On neither was there any label within sect. 6 of the Margarine Act. The appellant summoned the respondents for exposing margarine for sale by retail without a label contrary to the provisions of sect. 6. The magistrate dismissed the summons. Held, that the dismissal was right. (*Moore v. Pearce's Dining and Refreshment Rooms Limited*. Oct. 1895. Q. B. Div.) 196.

**MARKET AND FAIRS CLAUSES ACT, 1847** (19 Vict. c. 14), s. 13—*Pedlars*—*Pedlar's certificate*—*Whether a pedlar's certificate entitles holder to act as "licensed hawker"*—*Pedlars Act, 1871* (34 & 35 Vict. c. 96), s. 6; *Pedlars Act, 1881* (44 & 45 Vict. c. 45), s. 2—By sect. 6 of the Pedlars Act, 1871, a certificate under that Act is to have the same effect as a hawker's licence for the purpose of the Markets and Fairs Clauses Act, 1847, and the term "licensed hawker" shall be construed to include a pedlar holding such a certificate; and by sect. 13 of the Markets and Fairs Clauses Act, 1847, a penalty is imposed upon every person "other than a licensed hawker, who sells in a market, except in his own dwelling place or shop, any articles in respect of which tolls were authorised to be taken in that market. A person who held a pedlar's certificate, but not a hawker's licence, in a market sold or exposed for sale in a cart drawn by a horse



articles in respect of which tolls were authorised to be taken in that market : Held, that such person although he held a pedlar's certificate, was not a "licensed hawker" by virtue of sect. 1 of the Pedlars Act, 1871, as the word "pedlar" in that section means a pedlar when he is acting as a pedlar, and that, therefore, he was not exempted by the "pedlar's certificate from the penalty imposed by sect. 13 of the Markets and Fairs Clauses Act, 1847. *Howard v. Lupton* (L. Rep. 10 Q. B. 598) considered. (*The Woolwich Local Board v. Gardiner and another*. July, 1895. Q. B. Div.) 173.

**MENACES**—*Demand of money with menaces*—*Threat of accusation of immorality*—24 & 25 Vict. c. 96, s. 44.—The expression "menaces" in sect. 44 of 24 & 25 Vict. c. 96, includes threats of danger to a person by the making of accusations of misconduct against him, although the accusations are not of criminal but of immoral conduct. (*Reg. v. Tomlinson* Feb. 1895. C. C. R.) 75.

**MERCHANDISE MARKS ACT 1887** (50 & 51 Vict. c. 28), ss. 2, 3.—*Trade description*—*Place where goods were made*.—The place or country in which any goods were made or produced is not the place or country in which the greater part of the material of which they consist was manufactured, but that in which the process which made them a finished product was gone through. B. had in his possession for sale certain goods to which was applied the trade description "Le Dansk, French Factory." Ninety per cent. of the material of which they were composed was produced in France; ten per cent. was afterwards added in England. Until the latter was added the goods were known in the trade as oleomargarine, afterwards as "Le Dansk." Held, that the country where the goods were made or produced was England, and that the description "Le Dansk, French Factory" was a false trade description within sect. 3, 1 (b) of the Merchandise Marks Act 1887 (50 & 51 Vict. c. 28), as amounting to a representation that they were made in France. (*Bishop v. Toler*. Oct. 1895.) 199.

**MERCHANT SHIPPING ACT 1854.** See sub "Justice of the Peace."

— *Intimidation.* See sub "Conspiracy and Protection of Property Act, 1875."

— *Passage broker*—*Person acting as*—*Receipt of money for passage in ship*—*Sale or letting of steorage passages*—57 & 58 Vict. c. 60, ss. 320, 341, 342.—The respondent undertook for the sum of 22l. paid to him by C., to place C.'s son as a farm pupil with a farmer in Canada, and out of the 22l. to procure for him a second-class steamship passage from Liverpool to Quebec, and thence by rail to his destination, but at the time no particular ship was named. Some days afterwards the respondent forwarded a contract ticket for a passage on a named ship which was to leave at a specified time, for which he paid 8l. This contract ticket was procured by the respondent from, and the 8l. named therein was paid by him to, duly authorised passage brokers who had obtained the same from the shipowners. The respondent made a small profit out of the 22l., but made no profit out of the sum paid for the contract ticket. Held, that the sale or letting of passages contemplated by sect. 341 of the Merchant Shipping Act, 1894 meant a sale or letting of a passage in a named ship to commence at a definite time for a specified voyage, and that, as the agreement made by the respondent was merely an agreement to procure a passage at a convenient time in a fitting ship, it was not an agreement for the sale or letting, and that the procuring the contract ticket was not the sale or letting of a passage within sect. 341, and that the respondent, therefore, had not acted as a passage broker within sect. 342. Held also, that the respondent had not received money in respect of a passage in any ship, within sect. 320, as the receipt of money in that section meant a receipt of money paid for a specified passage at a fixed time in a named ship. (*Morris v. Howden*. Jan. 1897. Q. B. Div.) 501.

**METROPOLIS MANAGEMENT ACTS.**—*Continuing offence.* See sub "Practice."

**MINES.**—*Coal mines*—*Daily inspection of guides and conductors*—*Report*—*Entry in book*—*Coal Mines Regulation Act, 1887* (50 & 51 Vict. c. 58), s. 49, r. 5.—It is provided by the Coal Mines Regulation Act, 1887, s. 49, r. 5, that a competent person, or competent persons,

appointed by the owner, agent, or manager for the purpose, shall, once at least in every twenty-four hours, examine the state of the external parts of the machinery, the state of the guides and conductors in the shafts, and the state of the headgear, ropes, chains, and other similar appliances of the mine which are in actual use both above ground and below ground, and shall once at least in every week examine the state of the shafts by which persons ascend or descend; and shall make a true report of the result of such examination, and every such report shall be recorded without delay in a book to be kept at the mine for the purpose, and shall be signed by the person who made the inspection. Held, that the result of the daily examination of the guides and conductors must be entered in the book, as well as the result of the weekly examination of the shafts. (*Scott v Bould*. Nov. 1894. Q. B. Div.) 52.

— *Inspector of mines — Authorising agent to lay information—Metalliferous Mines Regulation Act, 1872 (35 & 36 Vict. c. 77, ss. 33 and 35*—An inspector of mines under the Metalliferous Mines Regulation Act, 1872 having determined to prosecute for an offence under the Act which can be prosecuted before a Court of summary jurisdiction, is entitled to authorise an agent to lay the information in his name. M., an inspector of police in the county of M., laid an information against the respondents for an offence under sect. 13 of the Metalliferous Mines Regulation Act, 1872 (35 & 36 Vict. c. 77). In such information he described himself as the duly authorised agent on that behalf for F., an inspector of mines under the Act in whose name the information was laid. At the hearing F. appeared to support the information, but the respondents raised the objection that the information was bad on the ground that under sect. 25 of the Act it should be laid by the inspector in person. The magistrates adopted this view, and declined to hear the case. At F.'s request a case was stated. Held, that once the inspector himself had decided that the prosecution should be instituted, he had the same right to lay his information by an agent as any other prosecutor under sect. 10 of the Summary Jurisdiction Act, 1848, which is incorporated with the Metalliferous Mines Regulation

Act, 1872, by sect. 33. (*Foster v. Fyfe and another*. May, 1896. Q. B. Div.) 364.

NUISANCE—*Overcrowding in a house—“Premises”—“Inmates”—Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 2.*—R. was the chief officer in charge of a Salvation Army Shelter. He was summoned by the local sanitary authority, under sect. 2 of the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), for refusing to abate a nuisance caused by so overcrowding the shelter as to be injurious or dangerous to the health of the inmates, and the magistrate made an order for abatement. In the notice requiring the abatement, in the summons and in the order, the shelter was described not as a house (the words of the Act) but as “premises.” R. obtained a rule *nisi* for a *certiorari* on the grounds: (1) That “house” is not mentioned in the notice, summons, or order, and premises are not a house; and (2) that the persons proved to have been at the premises in question were not “inmates,” within the Act. Held, that the rule should be discharged. *Reg. v. Mead* (59 J. P. 150) approved. (*Reg. v. Slade* (Metropolitan Magistrate) *and another; Ex parte Robinson*. May, 1896. Q. B. Div.) 316

— *Smoke—Notice to abate—No specification of works to be done—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 91, 94.*—By sect 94 of the Public Health Act, 1875, the notice required under sect. 91 to abate a nuisance shall be a notice requiring the person causing the nuisance “to abate the same within a time to be specified in the notice, and to execute such works and do such things as may be necessary for that purpose.” The respondent Wastall was summoned before the justices, under sect. 91, and subsequent sections, for permitting black smoke to be discharged from a chimney not being a chimney belonging to a private dwelling-house in such quantity as to be a nuisance. A preliminary objection was taken that the notice under the Act was bad on the ground that it did not set out the works required to be done in order to remedy the nuisance. The justices upheld the objection, and dismissed the summons. Held (reversing the decision of the justices), that the notice was quite sufficient, as no works



were required to be done, but only the black smoke to be stopped (*Millard v. Wastall*. Jan. 1898. Q. B. Div.) 695

**PEDLAR.** — *Certificate — Licensed hawkers.* See sub "Markets and Fairs Clauses Act 1847."

**PENALTIES.**—*Summary procedure for recovery.* See sub "Practice."

**POLICE.** — *Cost of pay and clothing — Borough maintaining separate police force — Constables added temporarily from another force — Contribution by county council—Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 24, sub-sect. 2 (j.)—Police Act, 1890 (53 & 54 Vict. c. 45), s. 25.*—When a borough maintains a separate police force, and has temporarily added constables from another police force under an agreement made under sect. 25 of the Police Act, 1890, the county council is bound to pay to the council of the borough one half the cost of the pay and clothing of the constables so added, under sect. 24, sub-sect. 2 (j.), of the Local Government Act, 1888. (*Reg. v. The County Council of The West Riding of Yorkshire* March, 1895. Ct. of App.) 141

— *Pension—Chief constable — Incapacity through infirmity — Bankruptcy—Neglect to comply with order for medical examination—Nonpayment of pension—Mandamus—Police Act, 1890 (53 & 54 Vict. c. 45), s. 1, sub-sects. (a), (b); s. 5, sub-sects. 1, 3, 4, 7; ss. 7, 12.*—Where an order for the medical examination of a pensioner, under sect. 5 of the Police Act, 1890, is made by a police authority not really for the purpose of examining him as to the state of his health to satisfy them that his incapacity continues, but with some collateral object, it is made without jurisdiction, and the pensioner is not bound to obey it, and a *mandamus* will lie against the police authority to enable the pensioner to obtain continued payment of his pension. Under the Act the police authority have no power to cancel a pension without giving the pensioner the option of returning to the police force. Under the Act the police authority, or the medical practitioner selected by them, have jurisdiction to prescribe the time and place for the purpose of giving effect to an order for the examination of a pensioner to satisfy them

that his incapacity continues. The direction as to time and place is not the substantial part of the order for examination, and if a pensioner attends for examination, although not at the time and place indicated, he cannot be treated as disobeying the order. Decision of the Divisional Court reversed. (*Reg. v. Lord Leigh and others, The Standing Joint Committee for the County of Warwick; Re Kinchant*. Nov. 1896. Ct. of App.) 425

**PRACTICE.** — *Appeal — Court of Appeal—Jurisdiction — "Criminal cause or matter"*—Case stated on appeal from order granting distress-warrant in respect of poor-rate—*Judicature Act, 1873 (36 & 37 Vict. c. 66, s. 47).*—A case stated by justices on appeal from an order granting a distress-warrant to enforce payment of a poor-rate is a "criminal cause or matter" within the meaning of sect. 47 of the Judicature Act, 1873, and no appeal lies to the Court of Appeal from the decision of the Queen's Bench Division upon such case. (*Seaman v. Burley*. July, 1896. Ct. of App.) 403

— *Appeal—Court of Appeal—Jurisdiction—"Criminal cause or matter"*—*Supreme Court of Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 47.*—By a local Act it was provided that, "if it shall at any time be proved to the satisfaction of any two justices, after hearing the parties, that the illuminating power of the gas supplied by the corporation in the said township did not, when so tested as aforesaid, equal the illuminating power by this Act prescribed," the corporation shall forfeit such sum not exceeding 20*l.* as such justices shall determine, to be paid to the local board. Upon an information and complaint by the local board under the above provisions, the justices convicted the corporation and imposed a penalty of 10*l.*, and stated a case for the opinion of the High Court. Held, that the judgment of the High Court upon the case was a judgment in a "criminal cause or matter," within the meaning of sect. 47 of the Judicature Act, 1873, from which no appeal would lie to the Court of Appeal. (*The Mayor, Aldermen, and Burgesses of Southport v. The Birkdale Urban District Council*. March, 1896. Ct. of App.) 537.

— *Appeal to quarter sessions—Recognisance—Court before which recognisance may be taken—Summary Jurisdiction Act 1879 (42 & 43 Vict. c. 49), s. 31.*—An appellant from a Court of summary jurisdiction, under the Summary Jurisdiction Act, 1879, sect. 31, may enter into the required recognisance before any Court of summary jurisdiction, and need not necessarily do so before the Court which convicted or made an order upon him, or before a Court acting for the same county, borough, or place. (*Reg. v. Justices of Durham; Ex parte Newton*. March, 1895. Q. B. Div.) 120.

— *Certiorari — Quarter sessions — Amendment of conviction—Imprisonment with hard labour in default of distress—Striking out of words “hard labour”—Baines’s Act (Quarter Sessions Act, 1849, 12 & 13 Vict. c. 45), s. 7.*—S. was convicted in a Court of summary jurisdiction on an information under the Public Health (London) Act, 1891, for not abating a nuisance, and was fined 10*l.* and costs, or in default of sufficient distress was ordered to be imprisoned with hard labour. S. paid the fine without appealing. Held, upon a rule for a *certiorari*, that the conviction must be quashed, as the Act does not authorise hard labour for such an offence. S. was also convicted on another information under the same Act for disobeying a closing order, and the conviction in this case was drawn up in the same form as in the last case. S. did not pay the fine, but appealed to the quarter sessions, when the justices, on evidence that it was owing to an oversight on the part of the clerk when drawing up the conviction that the words “hard labour” were mentioned, amended the conviction under sect. 7 of Baines’s Act, affirmed the conviction as amended, and dismissed the appeal. Held, upon a rule for a *certiorari*, that the decision of the quarter sessions was right. (*Reg. v. Slade and others; Ex parte Saunders*. *Reg. v. Justices of London and others; Ex parte Saunders*. April, 1895. Q. B. Div.) 153.

— *Commitment — Intimidation — Description of offence.* See sub “Habeas Corpus.”

— *Commitment on two charges.* See sub “Habeas Corpus.”

— *Conviction — Certiorari — Public Health (London) Act, 1891 (54 & 55 Vict. c. 76)—Continuing offence—Limitation of time—Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 11—Amendment—Baines’ Act (12 & 13 Vict. c. 45), s. 7.*—On a conviction for wilfully and knowingly acting contrary to an order to close certain premises as unfit for human habitation the magistrate inflicted a fine of a shilling a day for the whole period during which the offence had continued (193) days. Held, that the conviction was bad as contrary to the six months’ limitation of sect. 11 of the Summary Jurisdiction Act, 1848. Held, further, that the conviction could not be amended under sect. 7 of Baines’ Act, since the mistake was not one made in drawing up the conviction, but a mistake of law. (*Reg. v. Slade (Metropolitan Police Magistrate) and others; Ex parte Saunders*. June, 1895. Q. B. Div.) 176.

— *Costs of prosecution upon conviction for a common assault—Power of court to order payment of—24 & 25 Vict. c. 100, ss. 47, 77.*—The court has power to make an order under 24 & 25 Vict. c. 100, s. 77, for the payment of the costs of the prosecution, in cases of indictment for common assault as well as in cases of indictment for assaults occasioning actual bodily harm. (*Reg. v. Waldron and others*. Feb. 1896. Grantham, J.) 373.

— *Criminal Law Amendment Act, 1885—Evidence of prior acts to rebut denial on oath by defendant—Limit of time.*—Where the prosecution is bound by statute to be commenced within three months of the offence charged evidence of similar prior offences by the prisoner is not admissible either in chief or to rebut the prisoner’s denial of those prior offences on cross-examination. (*Reg. v. William Beighton*. July, 1894. Pollock, B.) 535.

— *Evidence — Admissibility — Bankruptcy Act, 1883 (46 & 47 Vict. c. 52)—Bankruptcy Act 1890 (53 & 54 Vict. c. 71)—Bankruptcy examination—Admissions—Proof—Oral evidence as to statements made on bankruptcy examination.*—The statements which a bankrupt makes in the course of his examination in bankruptcy are not, though he is examined under compul-

sion, to be regarded as induced by undue influence. They are, therefore, admissible in evidence against him, unless excluded by the provisions of 53 & 54 Vict. c. 71, s. 27 (2). The provision contained in 46 & 47 Vict. c. 52, s. 17, that the notes of the examination when read over to and signed by the bankrupt may be used in evidence against him, provides merely a convenient method of proof, and does not exclude oral evidence of the statements made by the bankrupt in the course of such examination. *Semble*, "conduct," in the Bankruptcy Act 1883, s. 17 (1) refers to the matters specified in sect. 28 of that Act. (*Reg. v. Erdheim*. June, 1896. Q. B. Div.) 355.

— *Evidence — Admissibility — Confession — Inducement to confess — Duty of prosecuting counsel and solicitor — Bail.*—A confession made in consequence of an inducement held out by a person in authority is not admissible evidence. A statement made by an accused person after he has been told that it will be better for him to speak the truth, cannot be admitted as evidence against him. *Semble*, it is the duty of prosecuting counsel and solicitors having the charge of prosecutions to satisfy themselves before putting in evidence a confession, that it was not made under such circumstances as to be inadmissible. *Semble*, bail is not to be withheld unless it is otherwise impossible to ensure the prisoner's attendance at the trial. (*Reg. v. Rose*. Feb. 1898. C. C. Res.) 717.

— *Evidence — Admissibility of confession — Statement of fellow prisoner read and acknowledged by her in prisoner's presence, and prisoner's statement thereupon.*—Where one of two prisoners in custody on a charge against them jointly has voluntarily made and signed a statement implicating the other, and such statement is read over to the person implicated, and the latter, after being cautioned, makes a confession which is taken down in writing, and signs it when so written, the statement of the one prisoner and the admission of the other may be given in evidence on the trial of the latter. (*Reg. v. Hirst*. July, 1896. Dugdale, Q.C., Spec. Com.) 374.

— *Evidence — Competence of prisoner's*

*husband to give evidence — Prevention of Cruelty to Children Act, 1894*—The offence of feloniously causing grievous bodily harm, where the person alleged to have been injured is a child under sixteen, is not an "offence involving bodily injury to a child under sixteen" within the meaning of the concluding paragraph of the schedule to the Prevention of Cruelty to Children Act, 1894, and in such a case the prisoner and his or her wife or husband are not competent witnesses. (*Reg. v. Elizabeth Roberts*. Aug. 1896. Cave, J.) 530.

— *Evidence — Intent to defraud.* See sub "Bankruptcy."

— *Evidence — Previous conviction — Meaning of "convicted" — Finding of jury — Prisoner released on recognisances — Offences against Coinage Act, 1861 (24 & 25 Vict. c. 99), ss. 9 and 12.*—The prisoner having been found guilty by the verdict of a jury of any of the misdemeanours, crimes, or offences mentioned in sects. 9, 10 and 11 of 24 & 25 Vict. c. 99 (the offences relating to Coinage Act 1861) is sufficient to satisfy the word "convicted" in sect. 12 of that Act, which enables the conviction of a person for felony who has committed any of the misdemeanours, crimes, or offences mentioned in sects. 9, 10, and 11, after having been convicted previously of any of such misdemeanours, crimes, or offences. Evidence therefore of such finding is sufficient to support an indictment under sect. 12, and it is not necessary to prove that final judgment was given upon such finding. (*Reg. v. Blaby*. April, 1894. C. C. R.) 5.

— *Hear and determine — Service of summons — Refusal to proceed — Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43) s. 1 — London Building Act, 1894 (57 & 58 Vict. c. ccxiii.), s. 188 (1).*—The procedure for the service of a summons under sect. 188 (1) of the London Building Act, 1894, is only available where, after ordinary inquiry the person cannot be found or identified. When by such inquiry the person on whom the summons is to be served can be found or identified, then the summons must be served according to sect. 1 of the Summary Jurisdiction Act, 1848. (*Reg. v. Mead; Ex parte The London County Council*. Nov. 1897. Q. B. Div.) 670.

— *Indecent assault—Evidence—Complaint by prosecutrix made in absence of prisoner—Particulars of complaint admissible—Ground on which admissible.*—On the trial of an indictment for an assault on a female, not only the fact that the prosecutrix made a complaint immediately after the occurrence, but the particulars of her statement, even if made in the prisoner's absence, are admissible. The fact that the prosecutrix made a complaint is admissible as evidence negating consent on her part; and therefore the whole statement ought, in the interest of the prisoner, to be given in evidence. (*Reg. v. William Lillyman.* June, 1896 C. C. R.) 341.

— *Indictment—Clerk or servant.* See sub "Embezzlement."

— *Indictment—Commencement of prosecution—Rape—Defilement of girl under sixteen—Greater offence including the lesser—48 & 49 Viet. c. 69, ss. 5, 9.*—A prosecution for rape is in fact a prosecution for any of the offences of which a person tried on an indictment for rape may be found guilty. Although then it is provided by the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 5, that a prosecution for an offence under sect. 5 (1) shall not be commenced more than three months after the commission of the offence, a person originally charged with rape within the period limited may be subsequently convicted of the offence under sect. 5 (1). (*Reg. v. West.* Dec. 1897. C. C. R.) 675.

— *Indictment—Evidence—Certificate of birth—Proof of age—Cruelty to children—Custody or charge of child—57 & 58 Vict. c. 41.*—An indictment on which several defendants are charged may contain counts charging offences against individual prisoners as well as counts charging all the prisoners jointly. If it is likely that injustice may be caused to any prisoner by trying all the prisoners together, the Court may order the prisoners to be tried separately. Whether a person has the custody, charge, or care of a child is a question of fact; the age of a person may be proved by any lawful evidence; the production of a certificate of registration of birth is not, therefore, essential in cases where the age of a person is to be proved. *Semble*, the neglect made penal by the Prevention of

Cruelty to Children Act, 1894 (57 & 58 Vict. c. 41), s. 1 is wilful neglect. (*Reg. v. Cox.* Dec. 1897. C. C. R.) 672.

— *Indictment—Forged instrument—Telegram—Sufficiency of description—Admissions—How far plea of guilty extends—24 & 25 Vict. c. 98, ss. 38, 42.*—A telegram may be a forged instrument within 24 & 25 Vict. c. 98, s. 38, that section not being confined to instruments such as are mentioned in the earlier sections of the Act, but including instruments to forge which is either a felony or a misdemeanour. Where subsequently to a race having been won by a horse named "Lord of Dale," a forged telegram was sent to certain bookmakers containing the words "Three pounds Lord Dale," in consequence of the receipt of which the sum of 9*l.* was credited by the bookmakers in the account of the person by whom the telegram purported to have been sent: Held (*Lord Russell, C.J. and Williams, J. dissentientibus*), that the sender of the telegram had been rightly convicted, under 24 & 25 Vict. c. 98, s. 38, of procuring a forged instrument to be delivered: Per Hawkins, J.: The description in an indictment of a forged instrument as a forged telegram, that is to say, a forged message and communication purporting to have been delivered at a certain post-office, to wit, at Royal Exchange, Manchester, aforesaid, for transmission by telegraph, and to have been transmitted by telegraph to a certain other post-office, to wit, the head post-office at Manchester aforesaid, is a sufficient description of such instrument for the purposes of 24 & 25 Vict. c. 98, s. 38; and would, after verdict, be sufficient for the purposes of an indictment under sect. 42 of that Act. Also per Hawkins, J.: By pleading guilty a prisoner does not admit the truth of the facts stated in the depositions. He merely admits that he is guilty of the offence as charged in the indictment, and nothing more. (*Reg. v. Riley.* Feb. 1896. C. C. R.) 285.

— *Form of indictment.* See sub "False Pretences."

— *Indictment—Multiplicity of counts.* See sub "False Pretences."

— *Indictment—Necessary Averment—* See sub "Libel."



— *Indictment—Necessary averment—*  
*Offence not originally indictable—Claim*  
*to be tried by a jury—Summary juris-*  
*isdiction Act, 1879 (42 & 43 Vict. c. 49),*  
*s. 17.—*Where an indictment is preferred,  
 in accordance with the provisions of  
 sect. 17 of the Summary Jurisdiction  
 Act, 1879, against a person who, when  
 charged before a court of summary  
 jurisdiction with the commission of an  
 offence punishable summarily, claimed  
 to be tried by a jury, the Court has  
 jurisdiction to deal with the indictment  
 as if the offence had been originally  
 indictable, and the fact that the indict-  
 ment is preferred in consequence of the  
 defendant's claim to be tried by a jury  
 is not a necessary averment. (*Reg. v.*  
*Chambers.* Aug. 1896. C. C. R.) 401.

— *Indictment—False pretences—Neces-*  
*sary averments—Person to whom pre-*  
*tence made—Particularity—Evidence—*  
*Admissibility—Skilled witness—Expert*  
*in handwriting—Experience acquired*  
*otherwise than in profession or business.*  
 —An indictment which alleges that a  
 prisoner by means of an advertisement  
 in a newspaper made a false pretence to  
 all Her Majesty's subjects, by means of  
 which a person named in the indictment  
 was induced to part with money in the  
 belief that the pretence was true, suffi-  
 ciently alleges that the false pretence  
 was made to the person so named. *Reg.*  
*v. Sowerby* (11 L. T. Rep. 300; (1894)  
 2 Q. B. 173; 63 L. J. 136, M. C.) explained  
 on the ground that in that case the in-  
 dictment omitted to state not only the  
 person to whom the pretence was made,  
 but also the person from whom the  
 money was obtained; and the court  
 could not, in the absence of both these  
 averments, infer that the false pretence  
 was made to any person in particular.  
 In order to render the evidence of a  
 witness admissible on the ground that  
 he is skilled in the matter upon which  
 he is called to give evidence, it is not  
 necessary that such person should be  
 skilled in such matter by reason of his  
 profession or trade. It is sufficient if  
 the court is satisfied that he has in some  
 way or other gained such experience in  
 the matter as to entitle his evidence to  
 credit. (*Reg. v. Silverlock.* July, 1894.  
 C. C. R.) 104.

— *Indictment—Act of indecency between*  
*two male persons—One person charged*  
*alone with committing act with another*

—*Procuring commission of act of inde-*  
*cency—Male person charged with pro-*  
*curing commission of act with himself*  
*by another—Criminal Law Amendment*  
*Act, 1885 (48 & 49 Vict. c. 69), s. 11.—*  
 It is not necessary in order to convict a  
 male person under sect. 11 of the  
 Criminal Law Amendment Act, 1885,  
 of an act of gross indecency with another  
 male person that such other male person  
 should also be charged with and con-  
 victed of such act of indecency. It is  
 an indictable offence under sect. 11 for  
 one male person to procure the commis-  
 sion by a second male person of an act  
 of gross indecency with himself the first  
 mentioned of such persons. (*Reg. v. Jones*  
*and another.* Nov. 1895. C. C. R.) 207.

— *Inferences from findings of jury—*  
*Power of judge to draw inferences—*  
*Larceny—Animus furandi.—*In a crimi-  
 nal trial the judge has no power to  
 draw inferences of fact from the findings  
 of the jury. Upon the trial of an in-  
 dictment for larceny the jury, not having  
 agreed upon a verdict, were asked by  
 the presiding judge whether or not they  
 believed the evidence given for the pro-  
 secution, and the judge upon being  
 answered in the affirmative, directed a  
 verdict of guilty to be entered. A case  
 having been reserved at the trial for the  
 consideration of this court: Held, that  
 the direction amounted to a drawing by  
 the judge of an inference of *animus*  
*furandi* on the part of the prisoner  
 which ought to have been drawn, if at  
 all, by the jury; and that the conviction  
 was therefore bad. (*Reg. v. Farnborough.*  
 July, 1895. C. C. R.) 191.

— *Joint indictment for felony of cutting*  
*and wounding, and for aiding and*  
*abetting a felony—Conviction of one for*  
*misdemeanour of wounding, and of the*  
*other for aiding and abetting.—*14 & 15  
*Vict. c. 19, s. 5; 24 & 25 Vict. c. 94,*  
*s. 8.—*Upon a joint indictment charging  
 one prisoner with the felony of wounding  
 with intent to do grievous bodily harm,  
 and the other with aiding and abetting  
 him in committing such felony, it is  
 competent for the jury to find the one  
 charged with aiding and abetting guilty,  
 although they may have acquitted the  
 other of the felony, and found him  
 guilty only of the misdemeanour of  
 wounding by virtue only of 14 & 15  
 Vict. c. 19, s. 5. (*Reg. v. Waudby.*  
 July, 1895. C. C. R.) 194.

— *Penalties imposed by Act—Recoverable under Summary Jurisdiction Acts—Act enforceable by local authorities—Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57)*—Where an Act imposes penalties and provides that these penalties may be recovered under the Summary Jurisdiction Acts, any person may take proceedings to recover the penalties unless the right to do so is taken away by express words or by necessary implication.—A., the secretary of a certain association, took out a summons against B. for offences against the provisions of the Animals (Transit and General) Order of 1895 made by the Board of Agriculture pursuant to the Diseases of Animals Act 1894 (57 & 58 Vict. c. 57). On the summons coming on for hearing, B. took the preliminary objection that by sects. 2 and 34 the Acts and Orders under it were enforceable by the local authorities only. The magistrate upheld the objection, and refused to hear the case. A thereupon applied for a *mandamus* to compel him to hear and determine it. Held, that the *mandamus* should issue. (*Reg. v. Stewart; Ex parte Burnham*. Feb., 1896. Q. B. Div.) 232.

— *Search—Warrant—Form.* See sub “Justices of the Peace.”

— *Summary Procedure—Recovery of penalties—Six months’ limitation—Continuing offence—Metropolis Management Act, 1862 (25 & 26 Vict. c. 102), ss. 85 & 107.*—Sect. 85 of the Metropolis Management Act, 1862 (25 & 26 Vict. c. 102) provides that no building (except a church or chapel) shall be erected on the side of a new street of less width than fifty feet, which shall exceed in height the distance from the external wall or front of such building to the opposite side of such street without consent, &c., nor shall the height of such building be increased so as to exceed such distance, &c., and the section goes on to say, “and every person committing any offence under this enactment shall be liable to a penalty of 5*l.*, and in case of a continuing offence to a further penalty of 40*s.* for every day during which such offence shall continue after notice.” Sect. 107 of the Act provides that no person shall be liable for the payment of any penalty, “unless the complaint respecting such offence has been made before a justice within six

months next after the commission or discovery of such offence.” The builders of the structure after a conviction against them for an offence under sect. 85 of the statute finished the work, and left the premises; the appellants therefore proceeded for continuing penalties against the respondent, the owner of the structure. The magistrate dismissed the summons now taken out by the appellants against the respondent for continuing penalties. Held, that the respondent was liable for penalties for continuing the offence, as proceedings had been taken by the appellants within six months after the offence complained of had been committed. (*London County Council v. Worley*. Aug. 1894. Q. B. Div.) 37.

— *Trial by jury—Trial “according to the laws of Great Britain” —Foreign Jurisdiction Act, 1894 (53 & 54 Vict. c. 37), s. 1.*—A British subject tried on a criminal charge in a foreign country by a Court constituted under an Order in Council, or the Foreign Jurisdiction Act, 1890, or any of the statutes repealed by that Act, has no inalienable right to be tried according to the procedure of British Courts in this country, provided that the proceedings are not contrary to natural justice. Leave to appeal refused. (*Carew v. Crown Prosecutor in Japan*. July, 1897. Priv. Coun.) 625.

PREVENTION OF CRUELTY TO CHILDREN.  
—See sub “Practice.”

PRISONER. — *Evidence of — Order on Governor of Prison.*—See sub “Habeas Corpus.”

PUBLIC HEALTH ACT, 1875. — *Smoke nuisance*—See sub “Nuisance.”

PUBLIC HEALTH (LONDON) ACT, 1891.—*Bye-laws—Power to make bye-laws to “regulate conduct of businesses” —Prohibition of acts not prohibited by statute —Validity—Liability of master for acts done by servant—54 & 55 Vict. c. 76, s. 19, sub-sect. 4.*—Under a statutory power, which enabled the local authority to make bye-laws for “regulating the conduct of any businesses specified” in a section of the Act, amongst which was the business of “slaughterer of cattle,” the local authority made bye-laws providing that: “An occupier of a slaughter-house (a) shall not slaughter or permit



to be slaughtered any animal . . . in any part of the premises except the slaughter-house; (c) shall not slaughter or permit to be slaughtered any animal within public view, or within the view of any other animal: Held, that these bye-laws could properly be made under the power to make bye-laws for regulating the conduct of businesses, and were valid, notwithstanding that they prohibited acts not prohibited by the statute; and that, upon the proper construction of the bye-laws, "slaughtering meant slaughtering either by the master himself or by his servant, so as to render the master liable to penalties for acts done by his servant in the course of the business without the master's knowledge and against his instructions. (*Collman v. Mills*. Dec. 1896. Q. B. Div.) 481.

—— *Continuing offence*. See sub "Practice."

—— *Farmer keeping cows on his premises* — "Cowkeeper" — *Licence from County Council*—54 & 55 Vict. c. 76, ss. 20, 141.—A person who, being the occupier of a farm within the county of London, keeps upon his premises cows, the milk of which is used, not for sale, but for fattening calves, is not a "cowkeeper" within sect. 141, and therefore not a "dairyman" within sect. 20 of the Public Health (London) Act, 1891, and consequently, does not require a licence from the London County Council for the keeping of such cows. (*Umfreville v. London County Council*. Dec. 1896. Q. B. Div.) 464.

—— *Overcrowding*. See sub "Nuisance."

—— *Removal of house refuse—Obstruction of sanitary officer—Refusal to allow scavengers to enter house for removal of refuse—"Wilful obstruction"* 54 & 55 Vict. c. 76, ss. 16, 30, 31, 116.—Under the provisions of sect. 16 of the Public Health (London) Act 1891 the London County Council made a bye-law that the sanitary authority should remove, at least once in every week the house refuse on premises within their district, but they had made no bye-law as to the duties of occupiers of houses for the purpose of facilitating the removal of such refuse, and an authority under this bye-law appointed a certain day in each week for the removal of

such refuse, and gave due notice of the same. The respondent objected to the weekly removal of refuse as being an unnecessary annoyance, and on a certain day he refused to allow the scavengers of the authority to enter his house for the purpose of removing the refuse. Held, that the respondent, in so refusing, was guilty of "wilfully obstructing" the officers of the authority in the execution of the Act within the meaning of sect. 116 of the Act, and was liable to the penalty imposed by that section. (*Borrow v. Howland*. May 1896. Q. B. Div.) 368.

RAILWAY COMPANY.—*Bye-law—Invalidity of bye-law—Passenger travelling with a ticket on the day on which ticket was not available—No intention to defraud—Penalty provided by bye-law—Railway Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), ss. 103, 104, 108, and 109—Regulation of Railways Act, 1889 (52 & 53 Vict. c. 57), s. 5 (3).*—The bye-law of a railway company provided that "any passenger using or attempting to use, a ticket on any day for which such ticket is not available, or using a ticket which has been already used on a previous journey, is hereby subjected to a penalty not exceeding forty shillings." No fraud, or attempt to commit fraud, was alleged or suggested against the appellant. The justices convicted the appellant under the above bye-law. Held, that the above bye-law, being repugnant to sect. 5 of the Regulation of Railways Act, 1886, was an invalid one, and the conviction therefore was bad. (*Huffam v. North Staffordshire Railway Company*. Aug. 1894. Q. B. Div.) 42.

RAPE.—*Defilement of girl under sixteen—Indictment*. See sub "Practice."

SALE OF BREAD.—*Sale otherwise than by weight—"French or fancy bread"—Usually so sold*—3 Geo. 4, c. 106, s. 4; and the Bread Act, 1836 (6 & 7 Will. 4, c. 37), s. 4.—Bread, though it be made by a different process or of better materials than ordinary household bread, is not fancy bread within 6 & 7 Will. 4, c. 37, if it be similar in size, shape, and appearance to ordinary household bread as usually sold, and therefore it must be sold by weight. The appellants manufactured a superior kind of bread. The chief difference between it and ordinary

household bread was that a particular yeast, the nature of which was a trade secret, was used in its production. It was sold in loaves which, in size, shape, and appearance, resembled ordinary loaves of household bread. These loaves were not sold by weight. The respondent summoned the appellants before the justices for breach of sect. 4 of 3 Geo. 4, c. 106 (similar to sect. 4 of 6 & 7 Will. 4, c. 37). and the justices convicted, holding that the appellants' bread was not fancy bread, and should therefore be sold by weight. On appeal by special case: Held, that the conviction was right. (*The V. V. Bread Company v. Stubbs*. June 1896. Q. B. Div.) 336.

**SALE OF FOOD AND DRUGS ACT.—Adulteration —“ Drug ”—Beeswax—38 & 39 Vict. c. 63, s. 6.**—In a prosecution under sect. 6 of the Sale of Food and Drugs Act, 1875, of a grocer for selling beeswax adulterated by being mixed with paraffin: Held, that beeswax, so sold, was not a drug. (*Fowle v. Fowle*. Nov. 1896. Q. B. Div.) 462.

**Adulteration—Food and drugs—Sufficiency of certificate—Grounds of opinion set out—38 & 39 Vict. c. 63, ss. 6, 13, 18, 20, and 21.**—A certificate to be admissible in evidence under sect. 21 of the Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), in a prosecution for adulteration under that Act, need not set out all the ingredients found by the certifier in the sample analysed by him, provided it shows the ground on which he came to the conclusion that there was a foreign ingredient in the same. A sample of milk sold by A. was submitted to B. for analysis in accordance with the Act. B. certified that 94 per cent. of the same was milk, and 6 per cent. added water. He stated as his reason for this conclusion, that he had found only 7·97 per cent of solids not fat in the same, while genuine milk should have 8·5 per cent. Held, that the certificate was sufficient and was admissible in evidence. (*Fortune v. Hanson*, 74 L. T. Rep. 145; (1896) 1 Q. B. 203, distinguished. (*Budge v. Howard*. Oct. 1896. Q. B. Div.) 421.

**Adulteration of food—False Warranty—Prosecution for giving—Guilty intent—Necessity of showing—38 & 39 Vict. c. 63, s. 27.**—To constitute the

offence under sect. 27 of the Sale of Food and Drugs Act, 1875, of giving a false warranty in writing to a purchaser in respect of an article of food, guilty knowledge is necessary, and to convict a person under the section it is necessary to show that such person when he gave the warranty knew that the warranty was false. (*Derbyshire v. Houlston*. May, 1897, Q. B. Div.) 609.

**Adulteration of food—Milk—Abstraction of cream—Alteration—Altered article sold without disclosure—“ Disclosure ” how made—38 & 39 Vict. c. 63, s. 9.**—The appellants, proprietors of a refreshment room, served a customer with a glass of milk. On the glass was engraved “ Not guaranteed new or pure milk, or with all its cream. See notices.” The last words referred to a printed notice framed and placed on the counter as follows :—“ Milk Notice. Spiers and Pond Limited purchase all milk sold by them under a warranty of its purity and genuine quality, and take all possible precautions to ensure its supply to their customers in proper condition, but they are unable to guarantee it as either new, pure, or with all its cream, and (to meet the requirements of the Food and Drugs Act) do not therefore sell it as such.” The glass of milk so sold was found to be deficient in the proper proportion of cream. In a prosecution under sect. 9 of the Sale of Food and Drugs Act, 1875, for selling an article altered by abstraction of part of it, so as to injuriously affect its quality without making disclosure of the alteration: Held, that the above notice amounted to a disclosure of the alteration, and the seller therefore was not liable. (*Spiers and Pond v. Bennett*. May, 1896. Q. B. Div.) 332.

**Adulteration of food — Milk — Analysts' certificate—Evidence—38 & 39 Vict. c. 63, s. 21.**—The effect of the provision of sect. 21 of the Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), that “ the production of the certificate of the analyst shall be sufficient evidence of the facts therein stated, unless the defendant shall require that the analyst shall be called as a witness,” is to make the certificate where the analyst is not called not conclusive evidence, but merely evidence on which

the justices may regard the facts therein stated as proved unless there is other evidence to show that they are erroneous. (*Hewitt v. Taylor*. Feb. 1896. Q. B. Div.) 226.

— *Adulteration of food—Milk—Certificate of analyst—Sufficiency of*—38 & 39 Vict. c. 63, ss. 6, 18, 21, and *Form in Schedule*.—In a prosecution under sect. 6 of the Sale of Food and Drugs Act, 1875, for selling milk which contained 5 per cent. of added water, the certificate of the analyst, which was put in on behalf of the prosecution, stated that “the sample contained the percentages of foreign ingredients as under, 5 per cent. of added water, to the prejudice of the purchaser.” Held, that, as water is a constituent of all milk, it is not sufficient for the certificate to state that a certain percentage of water has been added, but that it ought to state the total percentage of water found in the sample and the constituent parts of the sample, and that the certificate therefore was insufficient and bad, and was rightly rejected as evidence in support of the charge. (*Fortune v. Hanson*. Jan. 1896. Q. B. Div.) 258.

— *Adulteration of food—Milk—False warranty—Time of service of summons—Sale of Food and Drugs Act Amendment Act, 1879* (42 & 43 Vict. c. 30), s. 10.—The provision of sect. 10 of the Sale of Food and Drugs Act Amendment Act (42 & 43 Vict. c. 30) requiring in prosecutions under the Act that the summons should be served on the person charged with violating the provisions of the Act within twenty-eight days of the purchase for test purposes of the food or drug where the food or drug is of a perishable nature, applies only when the person so charged, is the person from whom the purchase was made. As to others, service within a reasonable time is sufficient. (*Cook v. White*. Feb. 1896. Q. B. Div.) 229.

— *Adulteration of food—Knowledge of purchaser—Costs against magistrates*—38 & 39 Vict. c. 63, s. 6.—W. was charged before justices with selling for new milk an article not of the nature, substance, and quality demanded, contrary to sect. 6 of the Food and Drugs Act, 1875. A sergeant of police, acting under H.’s orders, who was an inspector

under the Act, purchased the milk from W., who, when he was asked for new milk, sold skimmed and charged a penny a pint, the usual price for skimmed milk. The justices differed, one being of the opinion that only a penny a pint being asked, the purchaser must have been aware it was skimmed milk he was buying: Held, that the knowledge of the purchaser was immaterial, and case remitted to the bench to convict. The respondent W. did not appear, but the magistrates did: Held, that costs in such a case could be given against them. (*Heywood v. Whitehead*. July, 1896. Q. B. Div.) 615.

— *Adulteration of food—Prosecution—Proper inspector and analyst to take proceedings—Jurisdiction of magistrate*—38 & 39 Vict. c. 63), ss. 20, 27.—In proceedings against offenders under the Sale of Food and Drugs Acts, inspectors and analysts cannot act for the purpose of taking or analysing samples or otherwise putting the Acts into operation for any district other than the district for which they have been appointed. A dairy company were prosecuted in the C. Police-court under sect. 6 of the Sale of Food and Drugs Act, for selling adulterated milk. The charge was dismissed on the ground that they had purchased a written warranty under sect. 25. An information was then preferred in the same court by the same inspector, and upon the same certificate of analysis, against the vendor, under sect. 27, for giving a false warranty in writing to the dairy company. The premises, both of the vendor and the company, were situated outside the district of the C. court, and neither the sale by the vendor to the dairy company nor the warranty, nor the delivery of the milk by the vendor to the company, took place within the district of the C. court, and no sample was taken at the place of delivery to the dairy company or during the course of such delivery, and neither the inspector who preferred the information, nor the analyst who gave the certificate, was appointed to act for the district where the milk was sold or where it was delivered to the purchaser:—Held, that there had been no violation of the acts by the vendor within the district of the C. court, and that that court had therefore no jurisdiction to deal with the informa-

tion. (*Reg. v. Horace Smith, Metropolitan Police Magistrate, and Kerr.* March 1896. Q. B. Div.) 307

— *Article not of quality demanded—Invoice and label on article supplied to seller—Warranty—38 & 39 Vict. c. 63*, ss. 6, 25.—Neither an invoice which contains a description of an article sold, nor a label affixed to such article, even though it contains the words “warranted genuine and pure,” can of itself constitute a written warranty within the meaning of sect. 25 of the Sale of Food and Drugs Act, 1875. (*Irons v. Von Tromp.* March 1895. Q. B. Div.) 132

— *Margarine — Marking cases and wrappers — Substance sold as butter — Purchase for purpose of analysis — Admission by seller that substance was margarine — Analysis condition precedent to prosecution — Margarine Act, 1887 (50 & 51 Vict. c. 29) — Sale of Food and Drugs Act 1875 (38 & 39 Vict. c. 63).* The Margarine Act, 1887, provides by sect. 6 that every person selling margarine by retail, save in a package duly branded or durably marked, shall in every case deliver the same to the purchaser in or with a paper wrapper, on which shall be printed in capital letters “margarine;” and by sect. 12 that all proceedings under the Act shall, save as expressly varied by this Act, be the same as prescribed by the Sale of Food and Drugs Act, 1875. The Sale of Food and Drugs Act, 1875, provides that an inspector may obtain samples of food and drugs, and if he suspect the same to have been sold to him contrary to the provisions of the Act, he shall submit the same to be analysed, and shall notify to the seller his intention to have the same analysed. If it appears from the certificate of the analyst that an offence against some one of the provisions of the Act has been committed, the person causing the analysis to be made may take proceedings for the recovery of the penalty therein imposed: Held, that it was a condition precedent to the right of a purchaser to take proceedings for a penalty under the above Acts that he should obtain a certificate from the analyst, and that this applied even in the case where a person admitted that he sold margarine contrary to the provisions of the Margarine Act, 1887. (*Smart and Son v. Watts.* Dec. 1894. Q. B. Div.) 62

— *Penalties imposed by police magistrate—Appropriation of same by Receiver of Metropolitan Police—Title of local authority—Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76), s. 126—Metropolitan Police Courts Act, 1839 (2 & 3 Vict. c. 71), ss. 7 and 47—Margarine Act, 1887 (50 & 51 Vict. c. 29), ss. 11 and 12.*—A penalty recovered before a metropolitan police magistrate under sect. 6 of the Margarine Act, 1887, in the case of a prosecution by an “officer, inspector, or constable of the authority who shall have appointed an analyst” within the meaning of sect. 26 of the Sale of Food and Drugs Act, 1875, must be paid to such officer, inspector, or constable, and not to the receiver of the metropolitan police district, in accordance with sect. 47 of the Metropolitan Police Courts Act, 1839. The appropriation of penalties effected by sect. 26 of the Sale of Food and Drugs Act, 1877, is a “proceeding” within the meaning of sect. 12 of the Margarine Act 1887. *Wray v. Ellis* (1 E. & E. 276; 28 L. J. M. C.) considered and distinguished. (*Reg. v. Titterton.* May, 1895. Q. B. Div.) 181

SALMON FISHERY ACTS.—*Salmon—Instrument for catching — Net—Gaffs, wires, snares, or “other like instrument”—Whether net is a “like instrument”—Salmon Fishery Act, 1861 (24 & 25 Vict. c. 109), s. 8—Salmon Fishery Act, 1873 (36 & 37 Vict. c. 71), s. 18.*—Sect. 8 of the Salmon Fishery Act 1861—as extended by sect. 18 of the Salmon Fishery Act, 1873—provides that no person shall use any spear, gaff . . . wire, snare, or other “like instrument” for catching salmon, or have in his possession such instruments with the intention of catching salmon: Held, that a net—even though it be by reason of the smallness of its meshes an improper and illegal net—is not a “like instrument” to a wire, snare, or any of the other instruments mentioned in the section, and that a person, therefore, who is found in possession of such a net, with the intention of catching salmon therewith, cannot be convicted under the section. (*Jones and Parry v. Davies.* Jan. 1898. Q. B. Div.) 706

SEA FISHERIES.—“Taking” — “Removing from the fishery”—*Sea Fisheries (Shell Fish) Regulation Act 1894 (57 & 58 Vict. c. 26), s. 1.*—The taking of shell fish



from the bed in which they were found, with the intention of taking them away altogether, amounts to a removal of such shell fish from the fishery within bye-laws made under sect. 1 of the Sea Fisheries (Shell Fish) Regulation Act, 1894 (57 & 58 Vict. c. 26), even though, as a matter of fact, the shell fish were in the result not actually taken away. (*Thomson v. Burns*. Dec., 1896. Q. B. Div.) 491.

SEARCH WARRANT. — *Form*. — See sub "Practice."

—— *Sufficiency of information*. See sub "Justices of the Peace."

SHOP HOURS ACT, 1892.—*Offence created—Penalty omitted*.—55 & 56 Vict. c. 62, ss. 3, 4, 5.—The Shop Hours Act, 1892, enacts by sect. 3, that no young person shall be employed in or about a shop for a longer period than seventy-four hours, including meal times, in any one week; by sect. 4, that in every shop in which a young person is employed a notice shall be kept exhibited by the employer in a conspicuous place referring to the provisions of this Act, and stating the number of hours in the week during which a young person may lawfully be employed in that shop; and by sect. 5, that where any young person is employed in or about a shop contrary to the provisions of this Act, the employer shall be liable to a fine not exceeding 1*l*. for each person so employed. Held, that the respondent was not liable to a fine under sect. 5, for having employed a young person in a shop in which the notice required by sect. 4 was not kept exhibited. (*Hammond v. Pulsford*. Dec., 1894. Q. B. Div.) 58.

—— *Young person—Employment partly indoors and partly outdoors—Employment "in or about" shop for more than seventy-four hours in one week*.—55 & 56 Vict. c. 62, s. 3.—Sect. 3 of the Shop Hours Act, 1892, provides that no young person shall be employed "in or about a shop for a longer period than seventy-four hours in any one week. Held, that the words "in or about a shop" mean "in or about the business of a shop," and accordingly that where the duties of a young person employed in a shop are partly indoor and partly outdoor duties, the time occupied in the outdoor duties must be counted as time occupied "in

or about the shop" within the meaning of the section. (*Collman v. Roberts*. Feb., 1896. Q. B. Div.) 273.

SLAUGHTER-HOUSE. — See sub "Local Government."

SUMMARY JURISDICTION.—See sub "Justice of the Peace."

—— *Claim to be tried by jury*. See sub "Practice."

—— *Service of summons*. See sub "Practice."

—— *Limitation*. See sub "Practice."

SUMMARY PROCEDURE. — *Continuing offence—Limitation*. See sub "Practice."

—— *Service of summons*. See sub "Practice."

THAMES CONSERVANCY.—*Navigation of barge—Apprentice duly bound—Right of apprentice to act as lighterman—Right of apprentice to assist licensed lighterman as second hand—The Watermen and Lightermen Amendment Act, 1859 (22 & 23 Vict. c. cxxxiii.), s. 54.—Bye-law 35 made thereunder—Bye-law 16 of the Thames Conservancy*.—An apprentice properly bound for the period and in the manner prescribed by the Watermen Act, 1859, is an apprentice "qualified according to the Act," within the meaning of sect. 54 of the Act, and he cannot be convicted under that section for acting as a lighterman without having a licence. Such apprentice may be a competent person to assist as second hand a duly licensed lighterman when navigating on the river Thames a barge of over fifty tons burden, within the meaning of the 16th bye-law of the Thames Conservancy, as the words in that bye-law, "one man in addition," are satisfied by there being on board to assist an apprentice duly bound within the meaning of the Watermen Act and the bye-laws made thereunder. (*Gosling v. Newton and Eagers*. March, 1895. Q. B. Div.) 135.

TICKET-OF-LEAVE.—*Effect of new sentence*. See sub "False Pretences."

TRAMWAYS.—*Destruction of ticket—Failure to produce to inspector—Refusal to pay fare again—Bye-laws—Reasonableness*

—A bye-law made by a tramway company requiring passengers to deliver up their tickets to an inspector of the company on demand or pay their fare over again is reasonable and good; and the fact that the passenger's failure to deliver up his ticket on demand is not wilful, but due to his having inadvertently lost or destroyed it, does not relieve him from the obligation to pay his fare again. *Heap v. Day* (51 J. P. 213) considered and approved. (*Hanks v. Bridgman*. Feb. 1896. Q. B. Div.) 224.

——— *Production of ticket*. See sub "Bye-law."

UN SOUND FOOD.—*Fruit sold wholesale—Sale of bulk under condition that unsound portion be destroyed—Liability to seizure in hands of retail dealer Questions for magistrates and jury—Bona fides of sale—Public Health (London) Act 1891 (54 & 55 Vict. c. 76), s. 47.*—In order to convict a person under sub-sect. 3 of sect. 47 of the Public Health (London) Act, 1891, of having sold for the food of man an article unfit for the food of man, it is necessary to prove that the article at the time it was found in the purchaser's possession was liable to be seized for one or other of the reasons stated in sub-sect. 1 of the section. That is to say, because being diseased, unsound, unwholesome, or unfit for the food of man, it was exposed for sale or deposited in some place over which the purchaser had control for the purpose of sale or preparation for sale. Further, assuming such facts to be proved, it is a question for the magistrates or jury, having regard to all the circumstances of the sale, to say whether or not the article was intended for the food of man by the defendant when sold by him; and whether, if it was represented at the time of sale not to be so intended, such representation was made *bonâ fide*. So held by the majority of the court, *Mathew, J. dissentiente*. (*Reg. v. Dennis*. May 1894. C. C. R.) 21.

VACCINATION.—*Neglect to procure vaccination—Justice signing summons—Necessity of subsequent order being signed by same justice—Vaccination Act 1867 (30 & 31 Vict. c. 84), s. 31.*—It is not necessary that the justice who grants a summons under sect. 31 of the Vaccination Act, 1867 should afterwards hear the case, or

sign the order directing the vaccination to take place. (*Southcombe v. The Guardians of the Yeovil Union*. Jan. 1897. Q. B. Div.) 489.

——— *Notice—Service of—Sufficiency of service—Vaccination Act, 1867 (30 & 31 Vict. c. 84), s. 31.*—Personal service of the notice required by sect. 31 of the Vaccination Act, 1867, to be given to a parent to have his child vaccinated is not necessary, nor is it necessary to show affirmatively that such notice reached the person for whom it was intended. The question of the sufficiency of such service is a question of fact to be determined by the justices upon the circumstances of each particular case. (*Holloway v. Coster*. Jan. 1897. Q. B. Div.) 487.

VAGRANT.—*Wife and children—Wilful neglect to maintain—Bona fide belief of adultery—Vagrancy Act, 1824 (5 Geo. 4, c. 83), s. 3.*—The respondent T. E. was charged under sect. 3 of the Vagrancy Act, 1824, for that he, being able to work and maintain himself and his wife and family "wilfully refused or neglected" to do so. The magistrates found that he refused to maintain his wife because of the *bonâ fide* belief that she had committed adultery, and that he had offered under certain conditions to support his children. They dismissed the summons, holding that under these circumstances T. E., the respondent, had not "wilfully refused or neglected": Held, that the magistrates were right. (*Morris v. Edmonds*. Aug. 1897. Q. B. Div.) 627.

VOLUNTEER CORPS.—*Power to make rules—Loss of capitation grant through inefficiency of member of corps—Rule making member liable for loss—Ultra vires—Volunteer Act 1863 (26 & 27 Vict. c. 65), s. 24.*—The power given by sect. 24 of the Volunteer Act, 1863 (26 & 27 Vict. c. 65) to officers and members of a volunteer corps to make rules for the management of the property, finances, and civil affairs of the corps, does not authorise them to make a rule rendering any member of the corps who shall fail to make himself efficient, and to earn the Government capitation grant, liable to pay to the funds of the corps a sum equal to the amount of Government capitation grant which he has in consequence failed to earn. Per Wright, J. :



The term penalty is ambiguous, and the fact that a sum is declared to be recoverable as a penalty is not in itself enough to show that the failure to pay it is an offence on which an information lies, and a conviction can be obtained. (*Reg. v. Lewis, Stipendiary Magistrate, and Moss.* May, 1896. Q. B. Div.) 328.

**WATERMEN AND LIGHTERMEN ACT.** See sub "Thames Conservancy."

**WATERWORKS CLAUSES ACT, 1847.** — *Metropolis—Water—"Constant supply" to district—Enforcement of—Who may sue for penalty—Remedy of individual aggrieved—Prepayment of rate—Metropolis Water Act, 1871 (34 & 35 Vict. c. 113), ss. 7, 16, 44, 45—10 Vict. c. 17, ss. 43, 44.*—The duty imposed upon every water company by sect. 7 of the Metropolis Water Act, 1871, to provide throughout their water limits a constant supply of water sufficient for the domestic purposes of the inhabitants, is a duty to the district, and therefore the penalty of 200*l.* imposed by sect. 16 upon any company which violates the provisions of that section can be sued for only by the metropolitan authority. The remedy of an individual who complains against a company for failing to supply him with a sufficient quantity of water for domestic purposes is under sect. 43 of the Waterworks Clauses Act, 1847, which imposes a penalty of 10*l.* and 40*s.* a day after notice upon undertakers who neglect or refuse to give such a supply to any owner or occupier "during any part of the time for which the rates for such supply have been paid or tendered." No penalty, therefore, can be recovered by an individual who has not paid or tendered the rate. (*Kyffin v. East London Waterworks Company.* Feb. 1896. Q. B. Div.) 235.

**WEIGHTS AND MEASURES ACT, 1889.** See sub "Bye-laws."

—— *Coal — Sale of — Ticket — Correct weight—When to be ascertained—52 & 53 Vict. c. 21, s. 22.*—Upon a sale of coal, exceeding two hundred-weight, in a vehicle in bulk, the "correct weight" of the vehicle and of the coal, which, by sect. 22, sub-sect. 2, of the Weights and Measures Act, 1889, is to be inserted in the ticket required by the Act to be given by the seller to the purchaser, is the correct weight as previously ascer-

tained under sect. 22, sub-sect. 1, by a weighing instrument being at or near the place from which the coal is brought and not the correct weight at the time the coal is delivered to the purchaser. (*Knowles and Sons Limited v. Sinclair.* Dec. 1897. Q. B. Div.) 681.

—— *Coal dealer—Weighing machine—Bye-law requiring coal dealer to provide—Validity of bye-law—52 & 53 Vict. c. 21, s. 28.*—Sect. 28 of the Weights and Measures Act, 1889 gives a local authority power to make bye-laws requiring a weighing instrument to be carried with any vehicle in which coal is carried for sale or delivery to a purchaser. Held, that the local authority has power, under this section, to make a bye-law requiring every coal dealer to provide, and every person employed by him in conveying or carrying coal for sale or delivery to a purchaser from or out of any vehicle to carry therewith, a correct and stamped weighing machine of the form approved by the local authority; and that the validity of this part of the bye-law is not affected by the question of the validity or invalidity of a subsequent part of the same bye-law requiring the coal dealer to reweigh the coal. (*The County Council of Kent v. Humphrey.* May 1895. Q. B. Div.) 163.

—— *Milk churns or cans—Churn used for conveyance of milk—Measure for use for trade—False or unjust—Weights and Measures Act, 1878 (41 & 42 Vict. c. 49), ss. 22, 25, 44—Weights and Measures Act, 1889 (52 & 53 Vict. c. 21), s. 7.*—The appellant, a farmer, supplied milk to a customer, to whom he sent it through a railway company in churns or cans professing to contain a specific amount of imperial measure, and containing a gauge whereby the quantity of the milk was marked. Both the railway company and the purchaser relied on the accuracy of the gauges. Two of the churns, on being tested by the respondents' inspector, were each found to contain two pints less than the gauge indicated. The appellant was summoned and convicted under sect. 25 of the Weights and Measures Act, 1878 (41 & 42 Vict. c. 49), for having in his possession for use for trade measures which were false or unjust. Held, that the conviction was right. The churns used came within the meaning of sect. 25, and were measures

for use for trade. The essence of the legislation is, that for trade purposes dealings in quantities should be carried on with respect to accurate and not with respect to rough standards of weight and quantity. (*Harris v. London County Council*. Dec. 1894. Q. B. Div.) 65.

— *Sale of coal—Weight ticket—Delivery of total quantity expressed in ticket—Weights and Measures Act, 1889 (52 & 53 Vict. c. 21), s. 21.*—A quantity of coal exceeding two hundredweight was in course of being delivered from a vehicle to a purchaser, and the ticket delivered therewith expressed that the purchaser would receive two tons of coal in twenty sacks each containing 2cwt. When

eleven of the sacks had been delivered, the remaining sacks were weighed, and some were found to contain less and some more than 2cwt. each, but the deficiency in those weighed exceeded the excess. The magistrate found as a matter of fact that the whole quantity of two tons was delivered. Held, that, as the whole quantity expressed in the ticket had in fact been delivered, the seller could not, by reason of some of the sacks containing less than 2cwt. each, be convicted under sect. 21 of the Weights and Measures Act, 1889, of having delivered a less quantity of coal than the quantity expressed in the ticket. (*Godfrey v. Radford*. June, 1896. Q. B. Div.) 410.

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